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**Juvenile offenders, 'grave' crimes and the use of long-term detention**  
**An examination of the law and issues of contemporary criminal justice.**

Jowitt, Sharon

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*‘The punishment of certain grave crimes’*

**Juvenile offenders, ‘grave’ crimes and the use of long-term detention:  
An examination of the law and issues of contemporary criminal  
justice.**

**Sharon L. K. Jowitt**

**Ph.D (Law)**

## **Abstract**

This thesis examines the use of long-term detention for juveniles convicted of certain grave and very serious crimes (excluding murder). The study incorporates a detailed exploration of the law together with other substantive issues of contemporary criminal and youth justice. Centrally, the research focuses on s.91 of the Powers of Criminal Courts (Sentencing) Act 2000 (formerly s. 53(2) of the Children and Young Persons Act 1933). This law provides the higher courts with special powers to detain juveniles to longer periods of detention above the usual 24-month limit. This separate system of law and justice for the most serious juvenile offenders is subjected to rigorous theoretical and empirical scrutiny. At its heart, the study seeks to explain the mechanisms and ramifications of sentencing juveniles to long periods of detention. The cumulative research findings are based on a thorough review of the literature combined with an extensive fieldwork project undertaken at six selected young offender institutions. Interviews were conducted with 142 young prisoners (aged 15-21) convicted of violent and other very serious crimes and sentenced to long periods of detention. From a detailed analysis of key index offence and offender characteristics, the study examines the experiences of the respondents from the pre-conviction stage of the legal process and following sentencing. The varying levels of offence-gravity are considered within the context of contemporary sentencing theory and the use of proportionate sentences. In addition, the experiences of a remand to prison custody, trial and sentencing at the crown court, and detention in a young offender institution are described and critically evaluated. The research findings juxtapose the nature and extent of youthful offender vulnerability with the commission of very serious crimes and a system of justice most usually reserved for adult offenders. The tension between these elements represents one of the most complex challenges for contemporary criminal justice and society.

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 Criminal Justice and Court Services Act 2000  
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 Children Act 2004

*And it were highly to be wished, that legislative power would thus direct the law rather to reformation than severity.*

Oliver Goldsmith [1766], re-published 1982: 162

*In the world of juvenile justice, the substantive and rational pursuit of 'justice' has produced a diverse set of legal reforms ... and an uneven story.*

S. I. Singer, 1996: 18



## INTRODUCTION

Under the provisions of s. 91 of the Powers of Criminal Courts (Sentencing) Act 2000, the higher courts (exclusively) have special powers to detain juveniles convicted of grave or very serious crimes (excluding murder). In such cases, offenders aged from 10 to 17 years can be sentenced to a term of detention which is longer than the usual 24-month limit and the maximum period can include life. This sentencing framework marks the distinctive use of juvenile long-term detention (NACRO, 2002: 13; Boswell, 2006: 130). From the inception of this area of the criminal law, the concept of a 'grave' crime has been extended to include a broad spectrum of violent and other serious offences. As a result, the provisions to detain juveniles to long periods of detention have been widened. The present study examines the use of juvenile long-term detention from a multi-dimensional perspective, exploring key offence and offender characteristics, the legal process and the penal system. While the study population represents less than one per cent of all juveniles convicted or cautioned for indictable offences, there has been limited research into the types of offences that have resulted in the use of long periods of detention and the young offenders who have committed these crimes. Few studies have investigated the experience and effects of spending a long period in custody at a young age. These are matters which the present study will address together with questions prompted about the welfare, rehabilitation and punishment of the young. To this extent, the research constitutes an important and necessary strand within contemporary youth crime and criminal justice studies.

Very serious and violent offending by young people is a phenomenon that disturbs the public and shapes popular fears. These events are exacerbated by media representations which have fuelled the notion that serious youth violence is a new and prevalent threat to contemporary society (Estrada, 2001). This latter process both influences popular perceptions about youth crime and clouds the real picture (Pople and Smith, 2010: 71). There is strong evidence that the public overestimate the volume of serious youth crime and inflate the risk of youth violence (Hough and Roberts, 2004 cited in Jones, 2010: 344). In reality, however, the majority of recorded

crimes committed by children and young people are non-violent and non-serious. It is estimated that violent offences constitute approximately 15% of all crimes committed by offenders under the age of 18 (Pitts and Bateman, 2005: 12). Moreover, others have demonstrated that delinquency has historically been a part of childhood, and that violence in childhood is not a recent phenomenon (Ariès, [1962] reprinted 1996: 306-7; Thane, 1981). In line with these assertions, Pearson (1983) has revealed a long history of respectable [adult] fears in relation to youthful offending (p.242-3; see also Gauvard, 1999: 18). From a contemporary perspective, the pervasiveness of the mass-media and the amplification of news in relation to very serious crimes committed by children and young people, have acted to heighten popular anxiety and fears. Additionally, this latter feature has become an increasingly influential factor within the politics of youth crime and punishment.

From a broader view of youthful offending, criminal statistics produced by the Ministry of Justice show that in 2007/08, 21 per cent of all those convicted or cautioned for indictable offences were under the age of 18 (Pople and Smith, 2010: 62-63), although the numbers of juveniles entering the criminal justice system fell in 2009/10 (Youth Justice Board, 2012). While the figures remain significant, the picture relating to key patterns and trends in youth crime is very complex, with variations for different types of offences. An overview of contemporary crime trends conducted by Pople and Smith (2010) reveals that there was a sustained and strong rise in the total volume of crime, including youth crime, from 1950 to 1994. This long-term trend was reversed in the mid 1990s and the crime rate has fallen thereafter. It is also observed that violent crime, as a whole, has fallen at a slower rate than property crime and that serious violent crime ‘has also probably declined in the 2000s’ (p. 96). During the 1990s the numbers of offenders under 18 convicted of violence against the person plateaued at around 15,000 per year. The figures increased in 2002 and peaked in 2005 before declining in 2006 to 2008. The reasons for this trend are unclear but it is suggested that ‘the most likely explanation is that the system became more active in targeting and prosecuting violent young offenders’ (Pople and Smith, 2010: 96). In relation to sexual offences, youth convictions fell during the 1990s and then remained level during the 2,000s, while youth convictions for robbery have followed an upward trajectory (ibid: 71). According to the British Crime Survey, weapons were used in one-fifth (21 per cent) of violent crimes in 2008/9, a figure that has been stable over

the past decade (ibid: 71-2). It is further reported that while gangs are an important constituent factor particularly in relation to serious and violent youth offending, there remains no reliable evidence on whether or not they are becoming more common in Britain (Pople and Smith, 2010: 96; see also chapter 4 of the present study).

During the 1990s, there was an increasingly punitive approach to the treatment of violent and other serious juvenile offending. This was demonstrated by a large rise in the general use of custody for offenders under the age of 18. At the same time, there was also an unprecedented and dramatic rise in the number of adolescent offenders sentenced to long periods of detention. These trends occurred during a period in which there was a plateau in juvenile violent crimes against the person. Cumulatively, the increase in the use of punitive (custodial) sanctions was distributed across a broad spectrum of serious juvenile crimes. The use of custody for offenders under 18 remained at a peak level until 2001/2, followed by a gradual reduction and then a more significant decline in 2008/9 (Graham, 2010: 106, 127). However, the statutory provisions for detaining juveniles to long periods of detention have been considerably extended over this period. From 2000 to 2005, approximately 500 juveniles per year were sentenced to long periods of detention, although there were peaks and fluctuations during this period. Since 2005, a combined total of between 550 and 600 juveniles per year have been sentenced to long and extended periods of detention. Consequently, a larger proportion of young people in custody are serving long sentences, a feature which is not only likely to affect the dynamics of prison life, but also raise fundamental issues concerning the availability of specialist facilities and regimes for young long-term detainees.

### ***The research aims and methodology***

The present study is directed by four key aims:

- (i) To examine the evolution, history and contemporary use of long-term detention for juveniles convicted of grave or very serious and violent crimes. This aim incorporates a detailed examination of section 53(2) of the Children and Young Persons Act 1933 and latterly section 91 of the Powers of Criminal Courts (Sentencing) Act 2000.
- (ii) To describe and analyze the types of offences which have resulted in the use of long-term detention for juvenile offenders.

- (iii) To explore the background characteristics and life experiences of juveniles sentenced to long periods of detention.
- (iv) To collate and analyze individual and collective experiences of the remand process, sentencing at the crown court and serving a long period of detention in a young offender institution.

The present study is focused on the specific use of juvenile long-term detention under the current provisions of s.91 of the Powers of Criminal Courts (Sentencing) Act 2000 (formerly s. 53(2) of the Children and Young Persons Act 1933). From this remit, consideration is also given to the use of extended (determinate and indeterminate) public protection sentences, for ‘violent and dangerous’ juveniles, introduced by the Criminal Justice Act 2003. The study encompasses a thorough review of the relevant legal, criminological and youth justice literature. In addition, key research findings are based on an extensive empirical study examining the experiences of young offenders sentenced to longer periods of detention. At the time of the fieldwork (1997-1999), all the respondents had been sentenced under the provisions of s. 53(2) of the CYPA 1933 (latterly s.91 of the PCC(S) Act 2000). A central method underpinning the research comprises semi-structured interviews with 142 young offenders (aged 15-21) each serving a long period of detention in one of six selected young offender institutions (4 male and 2 female establishments). Interview data was supplemented with information obtained from individual inmate prison files and evidence from court and sentencing records, as well as pre-sentence reports (**see chapter 1**). The collection of data focused on three key areas of inquiry: (i) the offence or offences resulting in a long period of detention; (ii) offender background characteristics and life experiences; (iii) individual and collective experiences from remand to sentencing and during custody. The data collected provides a detailed picture of the use of long-term detention and its consequences for young people.

### *A brief note on the definitions of key terms used in this study*

Throughout the research, the term ‘juvenile’ is used to denote an offender under the age of 18. This age-limit, which determines a separation from the adult criminal justice system, has varied and increased over time. The use of ‘juvenile’ and ‘youth’, within this context, are inter-changeable. The term ‘grave’ crime from a purely legal

context incorporates a broad range of very serious and (most usually) violent offences. A key defining feature is that the severity of the crime is deemed to merit a period of detention, which is longer than the usual maximum custodial arrangements for offenders under the age of 18. The maximum alternative custodial provision for juveniles is a two-year detention and training order (DTO). As a result, sentences of detention above the usual 24-month limit are reserved exclusively for juveniles convicted of certain grave or very serious crimes. The phrase ‘long-term detention’ most usually (although not exclusively) denotes a minimum sentence of three years and the maximum can include life. From an examination of this area of the law, and in relation to the use of detention under s. 53(2) of the Children and Young Persons Act 1933, references throughout the study are made to the ‘s.53(2) sentence’, ‘s.53(2) offenders’ and ‘s.53(2) detention’. Following the transference of this legislation to s. 91 of the Powers of Criminal Courts (Sentencing) Act 2000, subsequent references are made to the ‘s.91 sentence’, ‘s.91 offenders’ and ‘s. 91 detention’ respectively.

### ***Overall objectives of the research***

In short, the objective of this research is to contribute to existing knowledge and understanding relating to: (a) the nature of the serious and violent youth offending that results in long custodial sentences; (b) the profile of young people who commit very serious crimes; and (c) the treatment of this population within the legal, criminal justice and penal systems.

## **CHAPTER 1**

### **The Research Process and Methods**

In further consideration of how the present study was conducted, the following short chapter presents an overview of the research methods employed and the ways in which the empirical data were coded and analyzed. It aims to explain and clarify how the use of statistical analyses in relation to the data collected has facilitated the presentation of comparable research findings between different sub-groups of respondents, including those from minority ethnic backgrounds. In addition and importantly, the statistical findings also reveal the *collective* experiences of a representative sample of young prisoners sentenced to long periods of detention. At the time of the fieldwork (1997-1999), the study sample (n=142) represented more than one-third of all young prisoners serving long periods of detention. As a result, the statistically-based research findings are robust, meaningful and persuasive. In addition, other qualitative data extrapolated from interviews and case records are also presented and in so doing, in-depth *individual* experiences are revealed. It should be noted that the use of quantitative and qualitative approaches to data collection and analysis reflects a complex study designed to measure and describe both the index offence and offender background characteristics, together with experiences of a remand to prison custody, sentencing at the crown court and managing a long period of detention.

#### **Negotiating access**

Access to young prisoners sentenced to long periods of detention was negotiated with individual prison governors at four male young offender institutions and two female prison service establishments. Letters were sent to each of the prison governors detailing the research aims and objectives. Meetings were then arranged in order to discuss the research in more detail, along with other practical considerations. The outcomes of these discussions were very supportive and encouraging, and the research was allowed to proceed. Subsequent informal visits to the four male establishments provided an important opportunity to meet with, and talk to young long-term detainees and prison officers. Introductions were also made with particular members

of staff who had been assigned to help co-ordinate the research fieldwork. A pilot study was conducted at one of the participating male young offender institutions (Feltham). The purpose of this was to test how young respondents might cope with the interview process: their levels of engagement and concentration, the ability to understand the questions together with assessing where further explanation or prompting might be required. An estimation of the duration of the interviews was also facilitated. Following the pilot study, the interview schedule was refined to incorporate structured follow-up questions relating to the index offence and the background characteristics of the offenders. The main research fieldwork commenced in November 1997 and was completed in March 1999. It is widely acknowledged that criminological empirical research is encumbered by the difficulties of obtaining formal access, and that this is most graphically highlighted in relation to prisons research (Jupp, 1989: 139; see also Cohen and Taylor, 1972). The process of negotiating access, as observed by Alison Liebling, 'is time consuming, difficult and entails the anxiety of uncertainty' (Liebling, 1992: 123). These latter features did have an impact on the time-frame and scheduling of the present fieldwork study. In relation to the overall research experience, Alisa Stevens (2013) has described conducting fieldwork in prisons as like 'walking a tightrope' (p.32). This analogy has a resonance with the present study.

### **Selection of the interview sample**

At each of the participating male establishments, a list of all those serving a long period of detention under the provisions of s. 53(2) of the CYPA 1933 (subsequently s.91 of the PCC(S) Act 2000) was obtained. From the list of names, a sample of 35 potential interviewees, at each of the 4 male YOIs, was identified. The total study population comprised young prisoners at varying stages of a long period of detention. Across the two female establishments, only five girls were identified as meeting the research criteria. Before any interviews took place, face-to-face meetings were held with potential interviewees and the research was explained to them. A strong emphasis was placed upon the issues of individual anonymity, confidentiality and informed consent. From a combined sample of 140 young males, only 3 declined to take part. In total, face-to-face interviews were conducted with 137 young males and 5 young females. The number of interviews conducted at each of the participating

prison service establishments are as follows: Moorland (32); Portland (36); Feltham (34); Swinfen Hall (35); Bullwood Hall (1) and New Hall (4).

### **Questionnaire design, interviews, case records and observations**

The main research instrument comprised a detailed questionnaire which informed and guided the interviews. An extensive series of closed and open-ended questions were designed to facilitate the collection of quantitative and qualitative data. The questionnaire was divided into eight main sections:

- Index offence, length of sentence, appeals
- Descriptive accounts of key offence characteristics
- Remands to custody and bail
- The court process and procedures
- Sentencing and custodial placements
- Experiences of long-term detention in a young offender institution
- Offender background characteristics and significant life experiences
- Offending histories

The use of semi-structured interviews provided respondents with the opportunity to elaborate on their fixed choice answers, and this facilitated the collection of both hard, comparable and rich meaningful data (see Pawson, 1996). However, levels of elaboration were very variable and further questioning or prompting was frequently required. In most cases, the interviews lasted for between 2 and 3 hours, although some were much longer. Most typically, the respondents were very willing to participate in the research, and they appeared to appreciate the attention shown to them. Some needed to have short breaks during the course of the interviews, but all interviews were completed. Participation in the research may have been viewed, by the respondents, as a welcome respite from the relentless routine of the prison regime.

Information was also collected from individual inmate prison files, as a method of supplementing and supporting the interview data. At each of the participating establishments, assistance was provided in accessing prison files/records. Consent for this enterprise was obtained from both the prison authorities and all participating young prisoners. In some cases, inmates' files were unavailable or information recorded was found to be incomplete. A large amount of time was spent trying to trace missing materials or piece together information that was available. In a majority



of cases, inmate files did contain pre-sentence reports, lists of previous criminal convictions as well as court and sentencing records.

At two of the male establishments (Feltham and Portland) some observational work was conducted into aspects of prison social life, including Association activities and inmate groupings, lock-up at night as well as the use of segregation. Although not a formal and planned part of the fieldwork, such observations provided additional insights which are included in the study. Informal conversations conducted with young prisoners and prison officers during the observational work are not reported.

### **Truth, authenticity and the validity of data**

The use of self-reported data via interviews as well as other methods raises important issues concerning truth and authenticity. Moreover, these issues might be particular pertinent to prison studies which focus on self-reported accounts from inmates. From the present fieldwork it was evident that young inmates were collectively perceived to be unreliable and untrustworthy by some prison officers. It was frequently repeated that *'you can't believe a word that they say, so why would you want to interview them'*. From a previous study of young men in prison, Michael Little (1990) considers 'how can the researcher be sure that the respondents are not distorting the truth, telling outright lies or exaggerating a point? and if it is accepted that young prisoners actively deceive, is it possible to rely on the evidence generated by interviews? (Little, 1990: 27-8). It is further recognized that 'the guiding principle of validity in whatever form it appears is, after all, the issue of truth' (Altheide and Johnson, 1997: 182). Interviews with young long-term prisoners during the present study were lengthy and provided the scope for re-checking and clarifying responses. The establishment of rapport and trust between the researcher and the respondents formed an important aspect of the interviewing process. This may have helped to cement an atmosphere in which the respondents felt able to disclose personal and sensitive information in a way that reflected individual 'truths'.

In all but two cases, details about the index offence given at interview were corroborated by information collected from individual inmate prison files. Information concerning family and other background characteristics was elicited with

varying degrees of detail. Very painful memories necessitated a sensitive and sympathetic approach. It was also clear that respondents were comfortable with answering questions about their remands to custody and prison experiences. There was no evidence to suggest that the respondents had exaggerated or embellished their experiences. If anything, they had tended to minimize difficult family experiences as well as limit the pains of their imprisonment. Other studies of young long-term prisoners have found that at interview, 'respondents erred towards reticence rather than excess' (Boswell, 1995).

Throughout the interviews, information was constantly checked, questions were repeated at various stages, and the clarification of responses was sought where necessary. From individual accounts, strong patterns, trends, collective experiences and recurrent themes did emerge. These features acted to both strengthen the plausibility of individual accounts and improve the validity of the interview data. In addition, the examination of individual inmate prison files also provided a mechanism for testing the reliability of the interview data and increasing the validity of the empirical research findings. Where inconsistencies were found, information was re-checked and every effort was made to ascertain the most accurate details. The research findings are based on plausible inmate accounts supported and supplemented with information obtained from individual inmate prison files. From the perspective of truth and authenticity, it is established that interviewing prisoners is an effective, reliable and approved method within contemporary prisons research (Kelly, 1992; Liebling, 1992; HM Inspectorate of Prisons, 1997; Stevens, 2013).

### **Coding and analysis of the empirical data**

All interviews with the young male respondents were tape-recorded with consent, except in three cases where young men had not wanted their interviews to be taped. At one of the female establishments, a senior prison officer allocated to assist with the practical aspects of the fieldwork instructed that the tape recording of interviews would not be permitted. The task of transcribing the interviews, which was conducted alone, was in equal measures arduous, time-consuming and challenging. Transcripts of the interviews, together with information recorded directly onto the questionnaire forms during interviews, were thematically coded and systematically analyzed. In the first instance primary quantitative data were coded and then analyzed using SPSS

(version 10). From this analysis, aggregated statistical outcomes were produced. The qualitative interview data were coded in accordance with pre-selected variables for analysis and subsidiary or emerging themes. For example, in exploring the characteristics of the offences for which the respondents had received their sentence, key variables analyzed from the qualitative data, included (a) the use of violence and weapons, (b) harm caused to victims and victim characteristics, as well as other offender characteristics including (c) alcohol and drug misuse, (d) multiple-offender crimes and (e) impulsivity. These data were coded, added to the SPSS file and analyzed using multiple statistical techniques. An identical approach to the analysis of other interview data was repeated and this method facilitated the aggregation of key offence and offender characteristics as well as experiences of a prison remand, sentencing at the crown court and detention in a young offender institution. In addition, individual case studies, quotations and representations collated from interview data and case records are also presented.

The present study can be contrasted with research conducted by Alisa Stevens (2013) into the experiences of adult prisoners detained at a therapeutic community prison. Stevens applies a more qualitative approach to the analysis of empirical interview data, informed by grounded theory (Stevens, 2013: 33). Contrastingly, the present study incorporates a structured approach to the analysis of qualitative data based on pre-selected and subsidiary variables, without losing the richness of the individual experiences that were disclosed within the research process.

A period of over 12 months was spent collating information recorded directly onto the questionnaire forms from interviews and case records, transcribing the interviews, designing a coding frame, inputting large amounts of data into an SPSS file, isolating qualitative data and completing the analysis. However, a deep familiarity and understanding of the materials collected significantly informed and aided both the interpretation of the research findings and the writing-up process.

### **A late 1990s fieldwork study: continuing relevance of the empirical data**

Although the research fieldwork was conducted during the late 1990s, the study shows that the empirical data collected and the findings based upon them are still

important and relevant to contemporary youth justice studies. From the perspective of the criminal law, the use of long periods of detention for juveniles convicted of certain grave or very serious crimes (excluding murder), as identified in the present study, is consistent with subsequent offence, offender and sentencing data. The inclusion of an up-dated analysis of the criminal statistics shows that in line with my findings, s.91 detention is principally applied to offences involving either serious juvenile violence against the person (including sexual offences) or violent robbery. The use of this sentence for less serious offences continues to be unusual and rare. The background characteristics and life experiences of the offenders in the present study are similar to those documented in previous and later studies (Boswell, 1996; Lösel and Bender, 2006). There have been no major transformations in society which are likely to have significantly changed the characteristics and life experiences described. Since the present fieldwork study, the crown court remains the venue for the trial and sentencing of juvenile offenders who commit grave or very serious crimes. As a result, the experiences documented are likely to remain relevant to other cohorts of these offenders. Additionally, some of the custodial experiences of the respondents in the present study are still to be found endemic in the YOI system, particularly in relation to inmate bullying, victimization and self-harm. The main findings illuminate the vulnerability of young people convicted of very serious crimes and the provision of custodial regimes that fail to meet individual complex needs. These features have been incorporated into subsequent policy and practice, resulting in the development of special custodial provisions (long-term sentence units) for the most vulnerable male s.91 offenders.

Before going on to describe the empirical research findings in detail, the following chapter examines key developments in the use of juvenile long-term detention from a historical and contemporary legal, political and social context.

## **CHAPTER 2**

### **Grave Crimes Law and Youth Justice: Historical Developments**

The treatment of children and young people who commit very serious crimes occupies a distinct and separate space in terms of both the law and the criminal justice system. Additionally, at the heart of such cases, issues of secure confinement together with the concepts of punishment *and* welfare are uniquely intensified. This chapter examines the evolution, history and contemporary use of long-term detention for juveniles convicted of certain grave crimes (excluding murder). The study presents a detailed analysis of s. 53(2) of the Children and Young Persons Act 1933 and the subsequent transference of this provision (as amended) to s.91 of the Powers of Criminal Courts (Sentencing) Act 2000. This area of the criminal law is evaluated in the light of other political, ideological and social perspectives and trends which have shaped the treatment of serious juvenile offenders. In addition, key developments in the history of youth justice and penal policy are also illuminated. The present study also considers changes to the law as a result of the Criminal Justice Act 2003, which has introduced extended (determinate and indeterminate) sentences for ‘dangerous and violent’ juvenile offenders, and co-exists alongside the provisions of s. 91 of the PCC(S) Act 2000. As a result, the law relating to serious violent juvenile offending has become increasingly complex and contentious. The chapter begins with a summary of the treatment of child and adolescent offenders leading up to the Children and Young Persons Act 1933.

#### **Juvenile offenders and legal reform during the nineteenth century**

The history of the law and youthful offenders not only illuminates issues of crime and punishment, but also reflects the varied conceptualizations and roles of children and young people in society. During the mid-nineteenth century, the principle that a child or young person has a right to special care and protection underpinned the evolution of a separate system of justice for juvenile offenders. This principle, however, has a long history in English criminal law. Going back to the middle ages, there is evidence of a desire to discriminate between the adult criminal and the young offender. Judgements were spared in certain cases involving child offenders (Molony

Committee Report, 1927: 7). Underpinning the prosecution of children, the medieval church determined that reasoning and guilt could not properly be imputed upon children below the age of seven years (Stevenson, 1989: 68). Children from the age of seven, therefore, could be convicted of a criminal offence. From English common law, the ancient principle of '*Doli Incapax*' (incapable of guilt) added that children from the age of 7 to 13 (inclusive) could only be found guilty of an offence subject to a rebuttable presumption of innocence (May, 1973: 8-9). These provisions confirmed the separate status of child offenders (under the age of 14).

From the late eighteenth century, major social transformations resulting from industrialization and urbanization were coupled with an increasing severity of the penal code<sup>1</sup>. By the early nineteenth century, London and other expanding and over-crowded cities and towns were characterized by areas of extreme poverty and destitution as well as disease and crime. Children were expected to work from a very young age and for many this meant severe exploitation in the factories and mines (Morris and Giller, 1987: 4). Other images are of severely neglected children begging in the streets and committing offences of petty larceny (Porter, 1994: 299; see also Hendrick, 2006: 4-6). It is widely accepted that despite a lack of early statistical precision<sup>2</sup>, this period was marked by a large rise in the numbers of children (under 16) appearing before the courts (Muncie, 1999). This coincided with a popular belief that not only was juvenile crime rising but it was also threatening to undermine society (Shore, 1999: 5). Juvenile crime was essentially (although not exclusively) seen as an urban working class male phenomenon. While for young females, immoral conduct was the subject of major social censure.

During the first half of the nineteenth century the philosophy which underpinned the response to juvenile crime was one of punishment and retribution. It is observed that 'children at that time were largely treated as adults in society and the criminal justice system reflected that social attitude' (Fionda, 1998a: 1; see also May, 1973; Morris and Giller, 1987: 4; Rutherford, 1992: 39-40). Hence children from the age of seven

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<sup>1</sup> This included an expansion in the availability of the death penalty for a growing number of property offences including petty theft (see E.P. Thompson, 1963/1968: 65-66; L. Radzinowicz, 1986).

<sup>2</sup> The first continuous series of criminal statistics for England and Wales dates from 1835. Before this date certain offender characteristics (including age) were not routinely recorded and therefore the actual rise in juvenile crime during the first three decades of the nineteenth century cannot be determined with any degree of accuracy (see Morris and Giller, 1987: 7).

were tried and sentenced in adult courts, and were eligible for all adult penalties including the death penalty, imprisonment, transportation, whipping and fines (May, 1973: 9; Radzinowicz and Hood, 1986: 133; Harris and Webb, 1987: 9; Uglow, 1995: 310; Fionda, 1998a). It is reported that on a single day in 1814, five children aged between 8 and 12 years were hanged for petty larceny (Pinchbeck and Hewitt, 1973: 352). The use of the death penalty for juvenile offenders (under 16), however, was generally very rare (Knell, 1965; Platt, 1969; Radzinowicz and Hood, 1986). More typically, capital sentences for the young were commuted to either transportation or imprisonment (May, 1973; 2002: 99; Harris and Webb, 1987: 9).

Gradually transportation and capital conviction gave way to the use of imprisonment as the main form of punishment for all offenders – including the young (May, 1973; 2002: 99; see also Foucault, 1977: 232). During the first half of the nineteenth century there was a rapid expansion of the prison system and the prison population. At this time, half of those convicted of crimes were under the age of 21. In 1844 there were 11,348 children and young people between the ages of 10 and 20 in prison. While other figures show that in 1849 no less than 10,703 young people under the age of 17 were sentenced to either imprisonment (more typically) or transportation (figures obtained from the Molony committee report, 1927: 7-8). Within the extremely harsh, austere and brutal early Victorian prison system, child and adolescent offenders were mixed with adult criminals in the same penal institutions (Fitzgerald, 1962: 259; see also Jerrold and Dorè, 1872). As a result, children - including those of very tender years - were exposed to considerable contamination and corruption from older prisoners (Morris and Giller, 1987: 8). The issue of juvenile imprisonment together with a rapid and severe expansion of the general prison population became a catalyst for subsequent legal and penal reform.

By the mid-nineteenth century while the dominant philosophy underpinning the criminal justice system was still one of punishment, issues relating to both the welfare of children and the reformation of offenders were gaining momentum. Within this context, a distinct system of treatment for juvenile offenders was seen as axiomatic. Earlier attempts to separate young offenders from adult criminals were confined to systems of punishment. For example, although children (under 16) could be sentenced to transportation, in practice, many were confined on the Hulks – old ships moored on

the river Thames at Chatham and also at Portsmouth. In 1822 the *Bellerophon* was exclusively reserved for the confinement of juveniles under sentence of transportation. The first separate prison for youthful offenders (boys aged 10-18) was established at Parkhurst on the Isle of Wight in 1838. It was intended that the regime would incorporate a system of treatment distinguishable from that applied to adult inmates, with an emphasis on reformation as opposed to a strictly penal purpose (Fox, 1952: 329; Stewart and Tutt, 1987: 1). This prison, however, essentially operated according to a traditional penal model incorporating such degrading punishments as the use of leg irons and whipping (Uglow, 1995: 310; Arthur, 2010: 5). The use of Parkhurst as a separate prison for young offenders ended in 1864. Through a process of social and legal reform, a series of reformatory and industrial schools were established in order to provide a completely separate system of treatment for the majority of young offenders as well as those at risk of offending/delinquent behaviour. It is observed that these new institutions heralded 'the systematic separation of young offenders and others from [corruptible] adult criminals' (Harris and Timms, 1993: 8). The mid-nineteenth century reformatory movement in England was committed to reclaiming (or rescuing) the young and reforming those who offended against the law.<sup>3</sup>

The Youthful Offenders Act 1854 provided the courts with statutory powers to send children to reformatory schools although they first had to serve a short period of time in a prison. Magistrates were empowered to send any offender under 16 to a reformatory school for between two and five years with a minimum of fourteen days imprisonment. The Industrial Schools Act 1857 provided that vagrant and destitute children, at risk of becoming delinquent, could be sent to industrial schools in order to receive useful and industrious education. A sharp distinction was drawn between the neglected child and the delinquent child. As a result of the reformatory and industrial schools Acts (1854 and 1857), Margaret May has observed that:

For the first time in a legislative enactment Parliament recognized juvenile delinquency as a distinct social phenomenon and accepted responsibility not only for young offenders, but also for children who, although not in conflict with the law, required 'care and protection'.

May, 1973: 7

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<sup>3</sup> For historical and detailed accounts of the reformatory and industrial schools system see Carpenter, 1851; Platt, 1969; Radzinowicz and Hood, 1986: 165. Critiques of these institutions can be found in Garland, 1985 and Kelly, 1992.



In 1860, there were 48 certified reformatories receiving over 1,000 committals a year and holding about 4,000 young offenders (Radzinowicz and Hood, 1986: 180). Many more children were committed to the care of industrial schools. Between 1854 and 1873 a total of 26,326 juveniles were sent to reformatory and industrial schools (Morris and Giller, 1987: 25). Subsequent issues of an over-expanded system together with increasingly punitive regimes acted to compromise the ideals of welfare and reform for children and young people in these institutions (see Platt, 1969: 67).

Reformatory schools were not available for children and young people (under 16) who had been convicted of very serious violent crimes. These offenders were usually sent to prison. In addition, sentences of imprisonment were also imposed in other cases where a young offender was deemed too 'unruly' to be sentenced to a reformatory school. This latter population constituted a large proportion of the juvenile prisoner population. In the year 1879-80 approximately 900 children under the age of 12 and 6,500 children between the ages of 12 and 16 were sent to local adult prisons. Girls constituted 13% of this population (Radzinowicz and Hood, 1986: 624). During the 1880s there were strong public calls for the complete abolition of imprisonment for juvenile offenders (The Times newspaper, Oct 6, 1880: p7b-c). In 1895, the Gladstone Committee considered this matter but was not ready to recommend abolition. It was deemed necessary to retain the power to imprison juveniles awaiting trial or those convicted of grave offences and for whom the reformatory schools were not available. The emphasis was firmly placed on reserving imprisonment for the most serious juvenile offenders. The Gladstone Report (1895) was influential in shaping subsequent juvenile sentencing policy with regards to the use of imprisonment. In addition, following other recommendations from this report, the Prison Act 1898 and Prison Rules 1899, enshrined in law and policy the formal segregation of juveniles (under 16) from adult criminals in the prison system.

By the end of the nineteenth century, the numbers of juveniles sent to prison had declined dramatically. In 1903, a total of 10 children under the age of 12 and 1,000 children aged between 12 and 16 were sent to prison. Correspondingly, there was a

substantial increase in the use of <sup>4</sup>industrial and reformatory schools as an alternative to child imprisonment (Shore, 2002: 168). It is reported that by the end of the nineteenth century, and in totality, more than 30,000 young people (offenders, those at risk of offending, the destitute) were in the reformatory and industrial schools' system (Hendrick, 2006: 7). From a theoretical perspective, and with specific reference to the treatment of juvenile offenders, it is observed that 'classical conceptions of punishment and generalized deterrence were contested and disrupted by positivist conceptions of reclamation and individualized treatment' (Garland, 1985: 262). In determining penal measures, the maxim was that the punishment should fit the individual not the offence (Morris and Giller, 1987: 20). At the beginning of the twentieth century, the elements of welfare, treatment and punishment were all present in a newly emerging juvenile justice system (Rutherford, 1992: 50; Fionda, 1998a).

### **The Children Act 1908**

The Children Act 1908 also referred to as the 'children's charter', drew together late-Victorian legislation on the protection of children and 'established an age-specific legal apparatus for deprived and delinquent juveniles' (Bailey, 1987: 7; see also Clarke Hall and Pretty, 1909). The Act enshrined the principle that young offenders (under the age of 16) should be treated entirely separately from adults and receive special treatment at all stages of the judicial process (Ford, 1975: 19; Gelsthorpe and Morris, 1994: 950). Importantly this included the court process and proceedings as well as methods of punishment. As a result, separate juvenile courts were formally established to deal with all but the most heinous of youth crime (Fionda, 1998a: 77). It is observed that the new juvenile court symbolized the emergence of a separate and distinct criminal justice system for all but the most serious juvenile offenders (ibid: 77). Other commentators have also argued that from the very beginning, the juvenile court operated as a criminal court and the procedures were essentially the same as for adult offenders (Gelsthorpe and Morris, 1994: 950). Nevertheless, this was a highly significant moment in the development of a separate juvenile justice system.

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<sup>4</sup> By the end of the nineteenth century/early twentieth century many of the differences between the industrial and reformatory schools had been eroded. Delinquent and semi-delinquent children were admitted to industrial schools as well as reformatories (see Shore, 2002: 168).

Principally, the Children Act aimed to reform the sentencing and treatment of young offenders (under 16). Amongst its many provisions, the Act restricted the use of imprisonment for the young and established the reformatory and industrial school networks as the normal disposition for offenders below the age of 16. It is reported that this area of sentencing policy reflected a commitment to the issues of welfare and reformation – rather than the exclusive need to punish (Hansard, 1908: Vol. 186, Col. 1257; cited in Garland, 1985: 222). Under s. 102 of the Act, the use of imprisonment for children under the age of 14 was abolished. While for young people aged 14 and 15 years, a sentence of imprisonment was restricted to the cases where a young person was either ‘too unruly or depraved’ to be sent to the reformatory and industrial schools system (Land, 1975: 315). In such cases special certificates of unruliness or depravity were issued by the courts. In addition, children and young people (under 16) remanded or committed for trial would only be detained in a prison if they were deemed to be either too unruly or depraved to be sent to an alternative place of detention<sup>5</sup> (Fox, 1952: 334).

Within its broad provisions, the Children Act 1908 incorporated a special and distinct course of action for children and young people convicted of the most serious violent crimes. Section 103 of the Act formally abolished the death penalty for children and young people under the age of 16.<sup>6</sup> This was substituted with a newly created indeterminate sentence of ‘detention during His Majesty’s Pleasure’ for juveniles convicted (exclusively) of murder (see Atherley Jones and Bellot, 1909: 296). The powers to award this sentence were available only to the higher courts and, in effect, the sentence was introduced as an equivalent to the adult life sentence. In addition, s. 104 of the Act provided the higher courts with further special powers to detain juveniles convicted of attempted murder, manslaughter and wounding with intent to cause grievous bodily harm. In relation to these offences, a sentence of detention under the provisions of s. 104 was available in the cases where the court was of the opinion that no other legally prescribed ‘punishments would be sufficient’ (original wording of the statute; see also Clarke Hall and Pretty, 1909: 105; Dewar, 1910: 68). The length of detention (which could include life) had to be specified by the court. In

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<sup>5</sup> Alternative places of detention were provided by the police authorities and included reformatory schools for convicted youngsters, industrial schools, boys’ and girls’ refuges or homes (ss. 108-109 of the Children Act 1908) and the workhouses (PRO document HO45/14164; Fox, 1952: 334).

<sup>6</sup> The death penalty was available for offenders from the age of 16 but only in cases of murder.

addition, juveniles sentenced under s.104 of the Act were liable to be detained in such place and under such conditions as the Secretary of State may direct. This latter aspect of the s.104 provision was also applicable to juveniles convicted of murder.

These provisions marked out a distinct category of child and adolescent offenders who as a result of the gravity of their offences, were to be dealt with in the higher courts and sentenced to long periods of detention. It was recognized that in the most serious cases, lengthy periods of detention were necessary as both a punishment and a deterrent – regardless of the youthfulness of the offender. However, this was tempered by s.105(i) of the Act which provided that any young person detained under the provisions of ss. 103-104 may, at any time, be released on licence by the Secretary of State. This was subject to the successful rehabilitation of an offender. The aims and ideals of rehabilitation and reform were incorporated into the treatment of the most serious juvenile offenders. Following the implementation of the Children Act 1908, the use of s. 104 detention for juveniles convicted of the most serious violent crimes (excluding murder) was exceptionally rare (see figures below).

### **Other statutory provisions in 1907 and 1908**

As a result of the Probation of Offenders Act 1907, the courts were provided with new powers to sentence juveniles to community-based supervision as an alternative to imprisonment or detention in a reformatory or industrial school. This consolidated the extensive arrangements which had already developed informally (see Arthur, 2010: 11). Meanwhile, the Prevention of Crime Act 1908 introduced a new and special type of secure institution for young offenders aged 16-21 as an alternative to imprisonment. The first of these new institutions was located at Borstal in Kent. Thereafter a system of borstal institutions was established with the aim to educate, train and reform serious adolescent and young adult offenders. Portland and Feltham borstals were amongst the first of these new institutions for young males, while for young females, provision was made in the premises of a former state inebriate reformatory located within the walls of the women's prison at Aylesbury.

The powers to sentence a young person to detention in a borstal institution were available exclusively to the higher courts. Such sentences were indeterminate, with

young offenders serving at least one year and up to a maximum of three years. The minimum period of detention was increased to two years by virtue of s.11 of the Criminal Justice Administration Act 1914. Borstal regimes incorporated correctional training with elements of individualized treatment and espoused strong rehabilitative ideals (Fox, 1952: 332, 335). It is further observed that ‘in the case of borstal, the legal notion of proportionate punishment is displaced by a more utilitarian logic of reform and prevention [added to which] it is the offender who is addressed and not his offence’ (Garland, 1985: 221). The early borstal institutions, however, remained firmly attached to their penal roots and it was not until the late 1920s that a major reform of the borstal system was achieved (Fox, 1952: 358; Hood, 1965: 32).

### **Juvenile crime and justice during the 1910s and 1920s**

Following the implementation of the Children Act 1908, there was a further dramatic decline in the numbers of juveniles (aged 14 and 15) sentenced to imprisonment. In 1906, a total of 1,000 young people under 16 were received into prison on conviction, but by 1910, the figures had fallen to a total of 143 juveniles and the rapid reduction in the use of imprisonment for offenders under 16 continued unabated (Bailey, 1987: 58). Later figures for 1918 show that a total of 39 juveniles (aged 14 to under 16) were received into prison on conviction (Public Records Office, HO45/16515) and by 1925, the figures had reduced even further to only 8 juveniles. The dramatic reduction in the use of juvenile imprisonment initially reflected the continuing high use of alternative institutions for deprived and delinquent juveniles. At the outbreak of the First World War, there were 223 reformatory and industrial schools, accommodating 25,357 children and young people (Fox, 1952: 334). However, during the 1920s the increasing use of probation led to a major decline in the numbers of juvenile offenders sent to reformatory and industrial schools (Bailey, 1987: 52). At the same time, far fewer deprived and semi-delinquent children were admitted to these institutions. As a result, many reformatory and industrial schools were closed down (Molony Committee Report, 1927: 49). Meanwhile, for young offenders aged 16-21, lower rates of imprisonment coincided with a rise in the use of borstal training.

During this period, the treatment of juvenile offenders remained firmly attached to the concepts of welfare and reform as opposed to punishment. In addition, the political

and social movements of that time pressed forward the argument that the prevention of juvenile crime was far more important than punishment (reported in the Daily Telegraph 24.08.20). From a wider societal context, the effects of the First World War and the subsequent industrial/economic depression in the late 1920s resulted in severe hardship and poverty for many families. It is observed that at that time ‘[there] was a standard assumption that poverty was a major cause of juvenile crime and delinquency’ (Bailey, 1987: 15). Moreover, the emergence of a conception of delinquency which linked adverse social factors with criminal behaviour may have helped towards cementing a welfare approach to the treatment of juvenile offenders.

By the mid 1920s the use of reformatories, industrial schools and prisons for children and young people under the age of 16 had all declined dramatically. This coincided with a profound disillusionment with the use of institutions as a method of preventing juvenile crime. Most typically, institutions were reserved for juveniles convicted of serious crimes and for whom neither probation nor other alternative non-custodial penalties were deemed to be appropriate. Other findings from the present study show that from a declining population of juveniles aged 14 and 15 sent to prison, most were serving short sentences. Between 1910 and 1929, only 10 boys (under 16) in total were sentenced to a long period of detention under the provisions of s. 104 of the Children Act 1908 (Proceedings from Assizes and Quarter Sessions produced by the Home Office, 1910-1929). Notwithstanding the comparative rarity of the crimes to which the sentence was applicable (attempted murder, manslaughter, wounding with intent to cause grievous bodily harm), these figures may also suggest that the courts were unwilling to sentence juveniles to long periods of detention, when such sentences would inevitably be served in a prison. In all likelihood the judiciary used its discretion to award alternative sentences which not only reflected the gravity of the offence but also provided for the rehabilitation of offenders.

### **Children and Young Persons Act 1933**

In following the principles laid down by the Children Act 1908 and the subsequent Molony report (1927), the Children and Young Persons Act 1933 initiated a liberal, welfare-oriented legislative reform of state provision for children and young people in the child-care and penal systems (Ikin, 1933). It has been observed that ‘in all its

policies for juvenile offenders, the Act dethroned the concepts of punishment and control, and emphasized the protection and welfare needs of children and young people' (Ditchfield and Catan, 1992: 1). The concept of welfare was firmly extended to the child who came 'within the purview of the criminal law' (Ford, 1975: 13). From this perspective, the 1933 Act imposed the first specific duty upon the juvenile court to safeguard the welfare of delinquent and offending juveniles. Section 44 (1) provided that:

Every court in dealing with a child or young person who is brought before it, either as being in need of care and protection or as an offender or otherwise, shall have regard to the welfare of the child or young person.

In line with its rehabilitative and welfare ideals, the CYPA 1933 increased the age of criminal responsibility from the age of seven to the age of eight years (s.50) and redefined a *young person* as one aged between 14 and 16 years (inclusive). Within this provision, young offenders aged 16 were brought within the ambit of an evolving juvenile justice system for the first time. Amongst its extensive provisions, the Act set out to improve the residential treatment of juvenile offenders and those in need of care and protection. The distinction between reformatory and industrial schools was formally abolished and from the amalgamation of these institutions, a new system of (Home Office) approved schools was established. The approved schools were created to accommodate child and adolescent offenders together with those in need of care and protection.

Other measures included the introduction of remand homes as a place of custody for juveniles refused bail, those in need of care, protection or control requiring a 'place of safety', and juveniles whose cases were adjourned for reports. In addition, juveniles could be admitted to a remand home for a short period of detention (Gelsthorpe and Morris, 1994: 952). Section 52 of the Act restricted the use of imprisonment for the majority of child and adolescent offenders under the age of 17. Children under the age of 14 could not be sentenced to imprisonment for any offence. While for young people aged 14-16 (inclusive), imprisonment was restricted to the cases in which an offender was deemed to be either 'too unruly' or 'too depraved' to be sent to an alternative place of detention (including a remand home). Amongst its provisions, the

Act retained the use of whipping for boys aged 14-16 convicted of any serious (indictable) offence (Bailey, 1987: 105; Stevenson, 1989).

***Section 53: ‘Punishment of certain grave crimes’***

Within a general framework of welfare and special provisions for the young, section 53 of the CYPA 1933 re-asserted a separate course of action for juveniles convicted on indictment of murder and other grave crimes. In such cases, the higher courts (exclusively) were provided with special powers to sentence juveniles to long periods of detention. The side note to s. 53 *‘punishment of certain grave crimes’* reveals the intentions of this part of the legislation, although issues of offender welfare and rehabilitation had also to be considered. The separate and distinct status of this category of juvenile offenders, introduced by the Children Act 1908 (ss.103-105) became firmly enshrined in section 53 of the CYPA 1933. Section 53(1) of the Act formally extended the abolition of the death penalty to all young persons under the age of 18 (previously applicable to the under 16s). As a consequence, and in consolidation of previous legislation, this subsection provided an indeterminate sentence of ‘detention during His Majesty’s Pleasure’ for juveniles (under 18) convicted of murder. The custody of these offenders and the conditions of their detention remained under the directions of the Secretary of State. In addition, s. 53(2) of the Act provided for the detention of juveniles (under 17) convicted on indictment of certain other grave crimes. This latter subsection (which consolidated s. 104 of the Children Act 1908) provided that:

Where a child or young person is convicted on indictment of attempted murder, manslaughter or wounding with intent to cause grievous bodily harm, and the court is of the opinion that none of the other methods in which the case may legally be dealt with is suitable, the court may sentence the offender to be detained for such period as may be specified in the sentence; and where such a sentence has been passed, the child or young person shall, during that period, notwithstanding anything in the other provisions of this Act, be liable to be detained in such place and on such conditions as the Secretary of State may direct.

Any young person detained pursuant to the directions of the Secretary of State shall, while so detained, be deemed to be in legal custody (s. 53, subsection 3).

A sentence of detention under the s. 53(2) provisions was reserved for juveniles convicted of the most serious violent crimes against the person (excluding murder). In addition, the sentence was to be used as a measure of last resort when no other



alternative sentences were deemed to be appropriate. The period of detention which had to be specified by the court was determined by the gravity of the offence. In relation to this particular sentence, there was no statutory minimum period of detention and the maximum term could include life. However, as originally enacted, the sentence was typically reserved for offences that merited more than three years detention and the confinement of these offenders remained under the direction of the Secretary of State. In addition to these components of the legislation and by virtue of s. 53(4) of the CYPA 1933, any young person detained under the s. 53(2) provisions could, at any stage of the sentence, be released on licence by the Secretary of State. In the spirit of the CYPA 1933, this latter provision allowed for early release (on licence) in the cases where an offender was deemed to have been successfully rehabilitated (Godsland and Fielding, 1985: 285). In addition to the punishment of certain grave crimes, an adherence to the principles of rehabilitation was also built into the treatment of the most serious juvenile offenders. Later evidence, however, reveals that within the complexities of determining ‘successful’ rehabilitation, the powers of the Secretary of State to grant early release were very rarely invoked (Ditchfield and Catan, 1992: 1).

### **The use of s. 53(2) detention from 1938 to 1960**

As originally enacted, s. 53(2) of the CYPA 1933 was restricted to three specified offences: attempted murder, manslaughter and wounding with intent to cause grievous bodily harm. As a result, it has been reported that ‘section 53 appears to have been intended as a measure of social defence against a small number of dangerous juveniles rather than as part of a range of punishments available to the courts’ (Godsland and Fielding, 1985: 286). From this perspective and in line with the broader underpinnings of the CYPA 1933, the earlier use of s. 53(2) detention was exceptional and rare. The criminal statistics reveal that between 1938 and 1960, only **23** young males (under 17) were sentenced to detention under the s. 53(2) provisions<sup>7</sup>, on average just one young person per year, suggesting that the higher courts were awarding alternative sentences to juveniles convicted of very serious violent crimes. Other sentencing options available were: approved school orders, short periods of imprisonment for boys aged

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<sup>7</sup> Figures obtained from the Assizes and Quarter sessions statistics (table 111) published by the Home Office, 1938-1960.

14-16 (inclusive) and borstal training (up to a maximum period of three years) for boys and girls from the age of 16. It is further reported that ‘instead of ordering confinement for a specified number of years under the s. 53(2) provisions, the courts did find more flexible solutions including hospital, care, fit person and probation orders’ (Wilson, 1973: 14). With specific reference to the treatment of juveniles convicted of manslaughter, the following cases are highlighted in Patrick Wilson’s study:

Rosemary Russell aged 14 received an approved school order following a conviction for manslaughter (1958).

Francis Hardy pleaded guilty to the manslaughter of his mother. The Judge made a ‘fit person order’ and committed him to the care of Middlesex county council (1961).

Wilson, 1973: 122-129; 135

There is also evidence that in certain cases where the s. 53(2) provisions were applied, the judiciary exercised restraint in terms of the length of detention imposed as well as compassion towards the offender. This is exemplified by the following case:

In 1945 Adam Lee aged 15 pleaded not guilty to the murder of a 16 year old girl but was found guilty of manslaughter. The Judge commented that a report from the medical officer at Brixton prison had suggested that Adam required prolonged detention. However, the Judge told Adam, ‘*you are just now not very well. I want you to get well, and so I order that you shall be detained for 12 months in such a place as the Home Secretary may direct*’. The Judge added that he would personally write to the Home Secretary about Adam.

Wilson, 1973: 118

The figures relating to the rare use of s. 53(2) detention together with the illustrated cases act to demonstrate the extent to which issues of child welfare were integrated into the sentencing of juveniles convicted of the most serious violent crimes. In addition, the use of alternative sentences may not only reflect a reluctance on the part of judges to sentence juveniles to long periods of detention, but also symbolize a broader social welfare ideology underpinning the treatment of serious young offenders at that time. It would appear that even in the higher courts, the judiciary sought disposals appropriate to the welfare and rehabilitation of the young, as opposed to the strictly punitive elements of long-term detention and imprisonment.

In the exceptional cases where the s. 53(2) provisions were applied, these juvenile offenders could, in practice, be sent to an approved school, a borstal or a prison. Individual placements and conditions of detention for these offenders, while under the directions of the Secretary of State, were guided and instructed by the ‘circumstances of the offence, the age, maturity, character and mental condition of the offender and all other relevant considerations’ (Fox, 1952: 337). In line with these features, there was a significant degree of flexibility with regards to the allocation and placement of those sentenced to detention under the s. 53(2) provisions. The following extract illuminates a case dealt with in 1942:

Colin Chester Stern was sentenced to three years detention under the provisions of s.53 (2) of the CYPA 1933. Consideration was given to placing him within the Approved School system. This was, however, rejected and he served his sentence at Feltham Borstal.

Public Records Office document HO45/19777

From the very small number of juveniles detained under the s. 53(2) provisions and sent to prison, placements were confined to one of three ‘young prisoners’ centres’ which were located within separate wings of specially designated adult prisons. A detached wing at Wakefield prison accommodated the majority of young prisoners serving long terms of detention (over 3 years) including those convicted of murder and sentenced to be detained ‘during Her Majesty’s Pleasure’. It was recognized that the prevalence of serious psychological problems in this particular population of young inmates could be addressed by the psychiatric provisions within Wakefield prison (Fox, 1952: 349). A report from the Governor of this prison in 1948 illuminates the regime and treatment of young long-term prisoners:

They are a small group and lead a fully communal life of their own in their detached wing, though they mix with other prisoners in the workshops. They have a choice of several skilled and interesting trades with vocational training classes and a full working day. Their evenings are productively active with a wide selection of educational classes, correspondence courses and other fruitful organized activity. Above all a carefully selected and stable staff, with an Assistant Governor, who gives his whole time to the group, is responsible for the personal training of the boys.

Cited in Fox, 1952: 349

In addition to Wakefield prison, there was one wing at Lewes prison and a detached block at Stafford prison exclusively reserved for the accommodation of young male prisoners (under 21) who were serving sentences of up to four years. Those sentenced to more than four years, could also be detained at Dartmoor prison, although in practice this was extremely rare (Fox, 1952: 349-50). As a result of the very small numbers of female prisoners, there were no special facilities available for girls detained in the prison system, although a separate block for young females (under 21) was created at HMP Holloway. For girls under the age of 16 alternative placements were more likely to be sought in the approved school system, whilst girls from the age of 16 could be accommodated at the only borstal available for young females at Aylesbury.

### **Other aspects of juvenile crime and punishment from the 1930s to 1960**

At the time of the creation of the Children and Young Persons Act 1933, it is reported that ‘the most accepted explanation of delinquency was one which emphasized unsatisfactory home conditions’ from both ‘a psychological as well as a material’ perspective (Bailey, 1987: 128). The official criminal statistics for 1934 described a close relationship between the incidence of juvenile crime and the industrial depression of 1929-1933 (ibid: 125). During and following the Second World War there was a large rise in recorded juvenile crime (Muncie, 2002: 333). Between 1938 and 1945 the number of indictable offences committed by offenders of all ages rose by 48%, from 78,463 to 116,251. Offences committed by children and young people (under 21) increased by more than 50 per cent (Hoare<sup>8</sup>, 1947: 6). This period was characterized by severe social and economic conditions as well as the dislocation of families and communities. For children and young people, the experiences of parental separation and/or loss and its effects together with a lack of parental/paternal and external controls are likely to have contributed to the rise in youthful offending. The main objectives for the treatment of young offenders, during the 1940s, were firmly based on training and reformation (ibid: 20-1). Methods were actively sought to treat serious young offenders outside of the strictly penal system. While imprisonment was typically reserved for the most serious and exceptional cases, it was also recognized

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<sup>8</sup> From the first annual lecture in criminal science delivered by Samuel Hoare at the Department of Criminal Science, Faculty of Law, University of Cambridge on 31 January 1947.

that the reform of prison treatment for young offenders was essential (ibid: 15). Within the complexities of the law and sentencing policy/practice, however, other measures which aimed to punish and deter young offenders were also introduced.

The Criminal Justice Act 1948 abolished the use of imprisonment for offenders under 17 appearing before the juvenile court, and for those under 15 dealt with by the higher courts. In addition, the Act abolished judicial corporal punishment for boys aged 14-16 convicted of serious indictable offences. As an alternative, a new short custodial sentence (a detention centre order) was introduced for young males aged 14-21. This sentencing option was available for those offences in which neither borstal training nor probation were deemed to be appropriate. Custodial sentences of between 3-6 months were to be served in newly created junior (14-16) and senior (17-21) detention centres. Regimes were explicitly designed to deliver a *short, sharp shock* to recalcitrant young offenders as both a retributive punishment and a deterrent. It is observed that an emphasis was placed on 'strict discipline, hard work, appearance and deportment, cleanliness and respect for staff and other inmates' (Muncie, 2002: 336). The trend towards more punitive custodial treatment was extended to other institutions accommodating young offenders. In 1950 a special 'punishment borstal' was established and two years later harsher regimes were implemented throughout the borstal system (Gelsthorpe and Morris, 1994: 955). In tandem with the welfare and rehabilitation of juvenile offenders, sentencing options were also directed towards the competing elements of retributive punishment and deterrence.

By the early 1950s, the rates of adult and youth crime had started to decline, although this trend was very short-lived. In the mid 1950s an unexpected and unprecedented rise in recorded crime provoked both political and public anxiety (Bottoms and Stevenson, 1992: 4-5, 11). By 1958, the crime figures were at their highest recorded levels. For juveniles aged 14 to 16 (inclusive), the number of males found guilty of indictable offences was 2,274 per 100,000 of the population. This figure was just over double what it had been in 1938 and 47 per cent higher than it was in 1954 (Ingleby Report, 1960: 4). An increase in violent juvenile crime was also recorded: rising from 116 recorded crimes in 1938 to 1,231 crimes in 1959 (figures cited in the House of Lords, Report of Proceedings, 1 May 1961, column 1144). Although this growth was

significant, such crimes were still comparatively rare and atypical. Lord James of Rusholme in considering this phenomenon reported that:

One might easily get the impression that juvenile violence was a widespread and common phenomenon and that the young spend their time now running around with flick-knives and coshes and the rest. Yet I find that in a three month period ending at the end of January 1960, out of 825 offences found to have been committed by juveniles in Manchester, only 5 were offences against the persons.

House of Lords proceedings, 1 May 1961: columns 1128-1129.

From a broader social and cultural context, Britain during the mid-late 1950s was emerging from post-war austerity to a more affluent society with almost full employment. There was a renewed sense of freedom, optimism and hope for the future. This was a period also marked by the ascendancy of youth culture and the distinctiveness of 'youth' as defined by separate forms of identity and codes of style and behaviour. It could be argued that the rise in the profile of 'teenagers' evoked both adult hopes and fears. The notion of teenage rebellion was most markedly visible in the development of youth sub-culture. During the 1950s, the teddy boys emerged as a sub-cultural group characterized by a distinctive style and synonymous with aggression. The incidence of youth street violence committed by groups of teddy boys, in particular, attracted widespread media coverage. Adult society was outraged and teenagers (as a whole) were increasingly positioned as 'other' (see Hebdige, 1979). It is observed that a campaign to restore the use of corporal punishment which was centred on young offenders was not unconnected with such phenomenon as the rise of the teddy boys (Bottoms and Stevenson, 1992: 40). This form of punishment, however, was never reinstated. Violent disturbances involving young people detained at Carlton House senior approved school were also widely reported in the national media. These events marked a period where 'popular discourse began to move towards relative authoritarianism' (Stevenson, 1989: 83).

Political responses led to a reassertion of punishment and the use of detention for young offenders convicted of serious crimes. Correspondingly, at the end of the 1950s, there was a rise in the numbers of young offenders (under 21) sent to borstal institutions and detention centres. However, the use of imprisonment for offenders under the age of 17 was rare. Between 1957 and 1959 (inclusive), a total of 57 male

juveniles (aged 15 and 16) were sentenced to a term of imprisonment by the higher courts (The Ingleby Report, 1960: 106-107). From this total, only 2 young males were sentenced to long periods of detention under the provisions of s. 53 (2) of the CYPA 1933. By the end of the 1950s and into the 1960s prevention rather than cure was seen as axiomatic to the management of juvenile crime (ibid: 5).

### **Criminal Justice Act 1961**

Set against a back-drop of rising crime rates, an increase in youth violence and growing popular fears concerning young people and crime, the Criminal Justice Act (CJA) 1961 provided a new statutory framework for the treatment of young offenders. Most specifically, this Act was created to provide ‘more effective and appropriate measures for the detention and punishment of young offenders’ (R.A.Butler, House of Commons, Report of Proceedings, 17.11.60: c.562). Set within this remit was the continuing belief that every effort should be made to keep young offenders out of the prison system (ibid: c.562; see also Stevenson, 1989: 87). At the same time, the Act supported the broader use of alternative custodial treatment for young offenders sentenced to short and medium periods of detention. The main objectives were to make wider provision for the use of borstal training and detention centres in dealing with young offenders, and to discontinue short sentences of imprisonment as more detention centres became available.

In discussions leading up to the Criminal Justice Act 1961, Lord Parker of Waddington confirmed the fundamental principle that the penal treatment of young offenders should be primarily remedial (House of Lords, Report of Proceedings, 1.5.61: c.1102). A focus on appropriate training and issues of reformation, however, was juxtaposed with measures that aimed to punish and deter. Most significantly, the use of borstal training was expanded to all young offenders for whom the court considered that a period of detention between six months and two years was required. In addition, the age of eligibility for borstal training was lowered from 16 to a minimum age of 15, and the maximum length of borstal training was reduced from three years to two years. Borstal training was located at the centre of penal policy for serious young offenders from the age of 15. Correspondingly, the Act abolished the

remaining powers of the higher courts to impose a sentence of imprisonment on young people aged 15 and 16 years.

***Section 2 of the CJA 1961: Amendments to the use of s. 53(2) detention***

As an adjunct to the above measures, the Act extended the range of offences for which the higher courts could order a young person (under 17) to be detained under s. 53(2) of the CYPA 1933, in such place and under such conditions as the Secretary of State may direct. From the original [1933] statute, section 2 of the CJA 1961 deleted the three specified offences of attempted murder, manslaughter and wounding with intent to cause grievous bodily harm, and substituted the words; ‘*any offence punishable in the case of an adult with 14 years imprisonment or more*’. Within this amendment and unlike the original statute, individual categories of offences were not specified, and the scope of s. 53(2) was thereby extended to include a much broader spectrum of offending. In addition to crimes involving serious violence against the person, other categories of offences to which the sentence could now be applied were: *arson of a dwelling, burglary, certain sexual offences with minors, causing grievous bodily harm with intent to maim, using firearms with intent to resist apprehension, housebreaking and committing a felony, rape, robbery with violence or when armed* (Criminal Justice Bill [second reading], 17.11.60: c. 574). The s. 53(2) sentence (as amended) was intended to bring within its scope all offences in which a longer period of detention (more than three years) was deemed to be appropriate (Public Records Office, PCOM9/ 2288 [35010], p2). Before applying the sentence, however, the courts had to be satisfied that none of the other methods by which a case might legally be dealt with was suitable. The amended s. 53(2) provisions were available for juvenile offenders aged 14, 15 and 16 years. For child offenders (under 14) the sentence was restricted to manslaughter. Although if a child was charged with another very serious offence jointly with an adult, and the case was referred to the higher court, a sentence of detention under the amended s. 53(2) provisions could be imposed.

It has been observed that ‘the effect of the 1961 amendment was to extend considerably the range of offences which could be dealt with under the s. 53(2) provisions and to broaden the criteria whereby juveniles could be detained for longer



periods' (NACRO, 1988; see also Godsland and Fielding, 1985; Ditchfield and Catan, 1992). Other commentators have asserted that 'the linking of court powers with adult sentences suggests that the s. 53(2) sentence could be used as part of a tariff system of punishment and therefore extending it quite considerably beyond the function of a social defence' (Godsland and Fielding, 1985: 287; see also Harris and Timms, 1993: 77). The amendment also ensured that any increase in the courts' powers to impose sentences of 14 years or more on adults would automatically extend the scope of the s. 53(2) sentence for juvenile offenders.

During parliamentary discussions in the period leading up to the passing of the Criminal Justice Act 1961, strong concerns were expressed about the type of offences that could be brought within the proposed amendment to the s. 53(2) sentence. In particular there were concerns that the sentence could be used for less serious offences and be used unjustly (The Criminal Justice Bill, House of Commons Standing Committee B, 8.12.60: columns 111, 121). Sir Reginald Manningham-Buller, the then Attorney-General in response to this issue asserted that:

I do not suggest for one moment that this is a power which is likely to be generally used, but at the same time, I think that it is a power which it is wise to give the courts to use in appropriate cases, bearing in mind that it will be up to the Secretary of State to determine how and in what manner the sentence of detention will be served... additionally the power cannot be exercised unless the court is of the opinion that none of the other methods in which the case might legally be dealt with is suitable... This is an exceptional power which in the very nature of things will not be used but which it is necessary to have.

House of Commons Standing Committee B, 8.12.60: columns 107, 120

It is, therefore, important to note that at this time, although the s. 53(2) provisions were extended beyond the most serious violent offences against the person, it was the intention of parliament that this was still an *exceptional* power to be exercised with considerable restraint. In line with these early sentiments, the use of the s. 53(2) sentence (as amended) during the 1960s was very rare (see Table 2.1).

**Table 2.1 Juveniles sentenced to s. 53(2) detention from 1961 to 1970**

1961	1962	1963	1964	1965	1966	1967	1968	1969	1970
0	1	3	6	2	2	3	6	4	6

\*A total of 32 male juveniles and 1 female child offender

Figures obtained from the Criminal Statistics for England and Wales (1961-1970); for figures relating to 1966-1970, see also Godsland and Fielding, 1985: 285.

Between 1961 and 1970, a total of 32 male juveniles (under 17) and 1 female child offender (under 14) were sentenced to detention under the s. 53(2) provisions. In most of these cases, the offenders had been convicted of either manslaughter or other very serious sexual and non-sexual violent crimes (Dunlop and Frankenburg, 1982), indicating that despite the broadening of the scope of the s. 53(2) provisions, the judiciary exercised considerable restraint in its use and resorted in most instances to alternative sentences. From a study conducted by Boswell, it is suggested that ‘the judiciary [in all likelihood] used its discretion to find alternatives, such as borstal, which could be deemed ‘suitable’ despite the gravity of the offence’ (Boswell, 1996: 5). In line with the underpinnings of the CJA 1961, borstal training was being used as the main alternative to a sentence of detention under the s. 53(2) provisions. With specific reference to juveniles aged 15 and 16, therefore, a period of up to two years borstal training appears to have been a boundary which was very rarely crossed. The figures relating to the use of the s. 53(2) sentence confirm that during the 1960s, very few juveniles were serving more than two years detention.

Others have suggested that the rare use of the s. 53(2) sentence in the 1960s reflected a social welfare philosophy which dominated social policy and juvenile justice at that time (Dorey, 1987). Within this remit, the age of criminal responsibility was eventually raised (albeit conservatively) to the age of 10 by virtue of the Children and Young Persons Act 1963. This initiated the protection of all children aged 8 and 9 from criminal prosecution for the very first time. In addition, issues of child-welfare were absorbed into the treatment of juvenile offenders (under 17) – including those convicted of serious crimes. In 1964 a Labour party study group, chaired by Frank Longford, reported that serious offences were themselves indicative of the child’s need for skilled help and guidance (cited in Gelsthorpe and Morris, 1994: 956). In addition, radical changes to the juvenile justice system were proposed including the

removal of juveniles from the criminal courts and the penal system (Labour Party Study Group, 1964; *ibid*: 955-6). The Labour party's subsequent white paper entitled '*The Child, The Family and The Young Offender*' (1965) recommended the abolition of the juvenile court and its replacement by a non-judicial family council linked to a unified family service (Home Office, 1965). There was, however, vociferous opposition to these proposals mainly from lawyers, magistrates and probation officers (Bottoms and Stevenson, 1992: 35; Bottoms, 2002: 222). As a consequence, the following white paper '*Children in Trouble*' (1968), whilst retaining a strongly reformatory and welfare-orientated approach to the treatment of young offenders, reversed the earlier proposal to abolish the juvenile court and thereby supported its retention (Home Office, 1968).

Within the radical proposals to reform the juvenile justice system, it would appear that very little attention was given to the most serious juvenile crime. Some commentators have, however, reported that plans to reform section 53 of the CYPA 1933 were being considered (Cawson and Martell, 1979: 221). This may have been in response to an ideological rejection of long-term detention for juvenile offenders coupled with a rarity in the use of the s. 53 (2) provisions. However, the issue of children and young people convicted of very serious crimes and the availability of the s. 53(2) sentence were dramatically brought into the political and public arena by one rare and exceptional case. In 1968, Mary Bell aged 11 years was convicted of the manslaughter of two very young children and sentenced to detention for life under s. 53(2) of the CYPA 1933. The circumstances of this crime, together with the trial and conviction of Mary received extensive media attention, and created an unprecedented emotional and punitive response from the public (see Sereny, 1972; 1998). From a legal perspective, others have argued that 'this particular case may have been instrumental in the retention of the section 53 provisions' (Cawson and Martell, 1979: 221). It has also been suggested that 'an emotional response to the trial of Mary Bell put back progress towards the reform of the criminal justice system for young offenders' (Calouste Gulbenkian Foundation, 1995: 172). Mary was temporarily accommodated in the closed wing of a girls' remand home, and later transferred to the secure unit at Redbank. As a result of this case, the availability of regional secure units introduced for boys in 1964, was extended to include accommodation for girls. In addition, the

idea to create specialist youth treatment centres as an alternative secure provision was set in motion (Harris and Timms, 1993: 15; see further comments below).

### **Children and Young Persons Act 1969**

Although the timing of the Mary Bell case was significant, the legislation developed at this period – the Children and Young Persons Act 1969 – was imbued with a strong welfare agenda. It has been observed that this Act ‘contained the most developed application of welfare principles to criminal justice ever seen in an English statute’ (Bottoms and Stevenson, 1992: 36). The central principle underlying the Act was the desirability of creating a single set of social institutions and policies to accommodate both children and young people who offend and those in need of care and protection. In order to achieve this, the Act supported the use of non-criminal ‘care and protection’ proceedings for juvenile offenders up to the age of 16 (Rutherford, 1992: 59; Gelsthorpe and Morris, 1994: 956-7). These measures were designed to promote the decriminalization of the young and facilitate their diversion away from the criminal justice and penal systems. Local authority social workers were discharged with wide discretionary powers relating to the treatment of young offenders, although placements within the residential child-care system would still require a formal court order (Bottoms, 2002: 216). It is observed that ‘the weight of authority and discretion moved from the police, magistrates and the prison department towards local authorities and the Department of Health and Social Security’ (Hendrick, 2006: 11) - it seemed that ‘the hour of the ‘child-savers’ had finally arrived (Thorpe et al., 1980: 6, cited by Hendrick, 2006: 11). However, despite legislative authority, this most humanistic endeavour was never realized.

In 1970, the Labour government as arbiters of the CYP Act 1969 failed to win the general election and the Conservative party was elected to power. This new administration was ‘sympathetic to the police and magistracy, both of whom were strongly opposed to the ‘welfare’ orientation of the Act’ (Hendrick, 2006: 11). As a result, the more progressive and radical reforms contained within the Act were never fully implemented. The Conservative government, however, was committed to reforming the residential treatment of children and young people. Following the provisions laid down in the 1969 Act, approved schools and remand homes were

amalgamated into a new system of community homes with education (CHE) managed by local authorities. These were mainly open establishments for children and young people under care orders (non-offenders and offenders) as well as other remanded and convicted juveniles in the cases where non-secure residential treatment was deemed to be appropriate. At the same time, the provision of separate local authority regional secure accommodation (secure units) was expanded and developed as an alternative model of care or custody. In addition, a new youth treatment service under the direction of the Department of Health and Social Security (DHSS) was introduced to accommodate and treat the most seriously disturbed children and young people in the child-care and criminal justice systems. The first secure youth treatment centre, St Charles in Brentwood (Essex) was opened in 1971. This was followed by the opening of Glenthorne (Birmingham) in 1978. Within these populations were children and young people convicted of the most serious crimes and sentenced to detention under the s. 53 provisions (see Jowitt, 1996).

### **From welfare to punishment and the use of custody during the 1970s**

Following the implementation of the 1969 Act, the juvenile courts continued to function largely as they had before – criminal proceedings for 10-14 year olds continued and powers in relation to the sentencing of 14-16 year olds were not restricted. While care proceedings following the commission of an offence were made possible, such powers were used very sparingly (Newburn, 1997: 641). The overriding aims of the Act, to remove all children and young people (aged 10-16) from the criminal justice and penal systems and to provide alternative therapeutic interventions were severely compromised. Moreover, although welfarism within the youth justice system was not completely abandoned, there was also a definitive move towards the punishment of serious and persistent juvenile offenders (Tutt, 1981). It has been observed that during the early 1970s, there was a ‘bifurcated’ response to juvenile offending which produced two distinctive and opposing trends (Bottoms, 1974). Firstly, there was a large rise in the use of diversion (police warnings/cautioning) for minor juvenile offending, while secondly and simultaneously, there was a substantial increase in the use of custody for persistent and serious juvenile offenders (Gelsthorpe and Morris, 1994: 970-1). Also, the use of care orders as an alternative welfare oriented provision for child and adolescent offenders declined

during the 1970s (Dunbar and Langdon, 1998: 74; Tutt, 1981: 251). Together, these latter two features reflect a clear shift towards the use of punitive - as opposed to welfare - measures for those juveniles who were enmeshed in the formal criminal justice system.

The direction of juvenile justice during the 1970s appears to reflect a strong lack of political consensus and stability. The increasing use of punitive sentences for serious and persistent young offenders fits into a much broader context of civic and political authoritarianism, reflecting a decade beset by major economic crises and serious social conflict and discontent. Under the premiership of Edward Heath (1970-1974), there was a rise in trade union militancy and violent class-based political struggle (Hall et al. 1978: 284). The news headlines were dominated by industrial strikes and power cuts, unemployment and inflation (Sandbrook, 2010). Amongst the ranks of the unemployed were increasing numbers of young people and those from ethnic minority backgrounds. It is also reported that by the mid 1970s, there was an emerging 'underclass' of the poor and dispossessed that were essentially excluded from mainstream society (Morris, 1989). Increasing racial tensions were coupled with a deterioration in relations between the police and the black community (Hall et al., 1978). From an accumulation of major political, economic and social challenges and changes, the State (under both Conservative and Labour governments) sought to intensify methods of discipline and social control to those perceived to be a threat (see Hall, 1979: 3; Scraton, 1987: vii-iii).

The number of juveniles (aged 10-16) found guilty or cautioned for indictable offences per 100,000 population rose from 10,821 in 1970 to 13,904 in 1978 (Morris and Giller, 1987: 62). These figures represent a 22 per cent rise between 1970 and 1978. National opinion polls showed that juvenile crime was considered to be one of the most serious social problems in Britain (New Society, 12.6.80, p.220). Images and representations of young people in the mass-media focused on elements of working-class subversion, criminality and violence (Porteous and Colston, 1980 cited in Morris and Giller, 1987: 39-40). Key figures to emerge during the early 1970s included the 'skinheads', a sub-cultural group which became synonymous with aggression and violence. Other features of reported criminality included the rise of football hooliganism and violent incidents between rival football fans. Most significantly,

however, between 1972 and 1973 the widespread media representation of ‘muggings’ (violent street robberies) committed by teenagers shaped popular fears and created a moral panic (Hall et al., 1978: 16-17; see also Cohen, 1972: 28). While such crimes were comparatively unusual and atypical, they were perceived to be widespread by the public. Others have also observed that ‘media and political commentators linked ‘mugging’ with the problems of inner-city decay in general and ‘black youth’ in particular’ (Hall et al., 1978 cited in Kalunta-Crumpton, 2005: 231). This may have created a more generalized fear about young black males as well as contributing to the targeting of the black community to intensive methods of policing, including ‘stop and search’ (Hall et al., 1978: 8; see also Gilroy, 1987: 108, 112-116). These latter issues have not only left an indelible mark on British society, but they also remain pertinent to the contemporary study of youth crime and criminal justice.

### *Custody and the use of section 53(2) detention during the 1970s*

As previously indicated, there was a substantial increase in the use of custody for young offenders during the 1970s. Between 1969 and 1975 there was a doubling of the numbers of juveniles (aged 14-16) sentenced to a detention centre [from 1,923 to 4, 378] and a borstal institution [from 747 to 1,583] (NACRO, 1977: 16). Other figures indicate that between 1970 and 1979 there was a 155% increase in the number of boys aged 14-16 sentenced to a detention centre order and a 56% increase in the numbers referred to the crown court for sentencing (Morris and Giller, 1987: 97). In 1970, over 2,500 young people aged 14-16 were given detention centre orders or were remitted to the crown court with a recommendation for borstal training, but by 1979 this figure had increased to more than 6,500 (ibid: 97). It is interesting to note that the proportionate use of custody for offences involving violence against the person showed very little change (5% in 1969 and 7% in 1979). There were, however, large increases in the use of custody for juveniles convicted of theft, burglary and criminal damage. Most strikingly, the use of custody for robbery almost doubled (from 23% to 43%). It is observed that the overall substantial rise in the use of custody for juvenile offenders cannot be simply explained by either the rise or changes in the nature of juvenile crime (Gelsthorpe and Morris, 1994: 967). The figures, however, strongly suggest that the rise in custody was linked to a more punitive approach to the treatment of juvenile offenders and this is reflected in sentencing policy and practice.

From the general custody figures, there was also a very marked and sudden increase in the numbers of juvenile offenders (males and females) sentenced to longer periods of detention under the provisions of s. 53(2) of the CYPA 1933 (see Table 2.2).

**Table 2.2 Juveniles sentenced to s. 53(2) detention from 1971 to 1980**

1971	1972	1973	1974	1975	1976	1977	1978	1979	1980
10	18	42	23	39	47	58	79	56	65

\*A total 417 male juvenile offenders and 20 females

Figures obtained from the Criminal Statistics for England and Wales 1971-1980; see also Godsland and Fielding, 1985: 285.

From the figures presented, while the annual numbers are relatively small, they are nonetheless much greater than those reported for the 1960s. Between 1971 and 1980, a total of 437 juveniles (under 17) were sentenced to a period of s. 53(2) detention. The figures, while comprising mostly young males (aged 14-16) also include 20 female juvenile offenders. Overall, there was a six-fold increase in the use of s. 53(2) detention during the 1970s. From an alternative perspective, and based on the peak custody figures (1979), this separate and distinct population constituted approximately one per cent of the total number of juveniles sentenced to custody. The increase in the use of s. 53(2) detention reflects, to a certain degree, the marked rise in the numbers of juveniles referred to the crown court for sentencing (see previous comments). This, therefore, expanded the pool of offenders who could potentially be brought within the ambit of the s. 53(2) sentence.

Boswell (1996) has also noted that judicial discretion began to veer towards a more punitive approach to juveniles who could potentially be sentenced to a period of s. 53(2) detention (Boswell, 1996: 6). In addition, the use of borstal training may have been viewed as a less credible alternative disposal for juveniles (aged 15 and 16) convicted of very serious crimes. But the increased use of s. 53(2) sentences may also have been affected by the timing of other legislation. Most specifically, the Theft Act (1968) and the Criminal Damage Act (1971) extended the range of offences that could be classified as burglary and arson (respectively). As a result, more of these offences were automatically brought within the ambit of the s. 53(2) sentence (Dunlop and



Frankenberg, 1982: 43; Godsland and Fielding, 1985: 287). Not only, therefore, was the scope of the sentence further extended, but also and crucially, the judiciary demonstrated an increasing willingness to use this provision for a wide range of violent and non-violent crimes (see chapter 3). The 1970s also marked the use of s. 53(2) detention for offences involving juvenile street robbery – a crime which was also attracting increasing public attention<sup>9</sup>. Moreover in some of the most serious cases involving juvenile robbery with violence, exemplary sentences of exceptionally long periods of detention were awarded (Hall et al., 1978: 81-82).

Dunlop and Frankenburg (1982) conducted a rigorous investigation into the increasing use of the s. 53(2) sentence during the 1970's. Their conclusions indicated that the increase in the use of this sentence was not a simple consequence of an across-the-board escalation of serious crimes committed by juveniles. Rather they observed that:

It seems possible that the increase in the use of the Section 53(2) sentence may have been part of a general tendency to award more severe sentences and that this, in turn, may well have been engendered by an increasing number of juveniles appearing before the courts and an increasing number of juveniles being awarded custodial sentences of all kinds.

Dunlop and Frankenburg, 1982: 44

Other commentators have also suggested that during the 1970's, the courts demonstrated an increasing willingness to use the s. 53(2) provisions 'for both violent and non-violent offenders as an alternative to the care order or a borstal committal' (Cawson and Martell, 1979: 222). In addition, other evidence also reveals the increasing extent to which s. 53(2) offenders were placed in the prison system rather than alternative places of detention (local authority secure accommodation, borstal). For example, in 1975 from a total of 39 male juveniles sentenced to a period of s. 53(2) detention, more than half (56%) were sent to a 'young prisoner centre' located within a designated adult prison (NACRO, 1977: 21). So in addition to the abrupt increase in the use of the s. 53(2) sentence during the 1970s, juvenile boys from the age of 15 were now more likely to begin these sentences in a strictly penal

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<sup>9</sup> Since the 1970s, the single largest proportions of s. 53(2) sentences have been awarded to juveniles convicted of robbery (see chapter 3).

establishment: a trend which was set to continue unabated. Most significantly, perhaps, these changes transformed the s. 53(2) sentence from a measure of social defence against a small number of dangerous juveniles, to part of a tariff system of punishment for a wide range of violent and other serious juvenile crimes (Godsland and Fielding, 1985: 287).

### **Disillusionment with the use of custody: A new era in juvenile justice**

From a context of political, social and economic instability during the 1970s, the assertion of order and the rule of law became an increasingly axiomatic theme. Correspondingly, the issue of 'Law and Order' which was exposed to increasing politicization formed a central part of the Conservative party's manifesto during the 1979 general election campaign (Tutt, 1981: 247; Morris and Giller, 1987: 112). Others have suggested that this was 'the most avowedly 'law and order' manifesto in British political history' (Newburn, 1997: 642). The Conservative party was elected to power under the leadership of Margaret Thatcher with a large majority of the popular vote. Not long after the general election, the government produced a White paper entitled '*Young Offenders*' (Home Office et al., 1980). The proposals supported the use of detention centres as a method of delivering a short, sharp, shock to incalcitrant young offenders. In addition, a more punitive and harsh regime was introduced, as an experiment, in two detention centres with plans for extension across the estate (Muncie, 2002: 338). In contrast to this overt emphasis on punitiveness, the White paper also included proposals to shorten the periods for which a boy (aged 14-16) could be held in a detention centre, and advocated other changes to the use of custody and the custodial provisions for offenders under the age of 21 (Home Office et al., 1980: para. 46). Additionally, it was announced that the use of prison remands for boys aged 14 would be abolished (ibid: para. 47). The White paper also supported both an expansion in diversion (formal police cautioning) for juvenile offenders (10-16) and the use of community-based penalties as an alternative to custody (ibid: paras. 38, 48). The co-existence of opposing ideology was underpinned by an economic climate governed by financial restraint and the Tory government's commitment to significantly reduce public spending (see Hendrick, 2006: 13).

### *Criminal Justice Act 1982*

Following the proposals contained within the White paper (1980), the subsequent Criminal Justice Act (CJA) 1982 increased the powers of the juvenile court to award custodial sentences to young offenders and at the same time, restricted the criteria in which offenders (under the age of 21) could be sentenced to custody (Allen, 1991: 39; Arthur, 2010: 21). The Act also provided a clear statutory framework for the expansion of community sentences for serious and persistent juvenile offenders. In the cases where the use of custody could be justified, substantive changes were made to the structures and form of such sentencing. Most significantly, and except in the special circumstances of life imprisonment, the Act abolished the use of indeterminate sentences for young offenders under the age of 21. Borstal training was replaced with a new determinate sentence of youth custody for offenders (males and females) aged 15-21. The purpose of this change to determinate sentencing was to enable the courts to mark the seriousness of the offence by the length of sentence imposed (Home Office et al., 1980, para. 11). These measures supported the use of proportionate sentencing or commensurate punishment based largely on the gravity of the offence. This development heralded a substantive move towards a 'just deserts' model of sentencing for juvenile and young adult offenders (Dunbar and Langdon, 1998: 75). In contrast to borstal training, the youth custody sentence, like imprisonment, also attracted a fixed period of remission (one-third of the sentence) and time spent on remand in custody was to be taken into account. The stage was set for a reduction in the time young offenders would spend in custody.

In line with these developments, borstal institutions were transformed into youth custody centres. The staff of these 'new' institutions wore a uniform rather than the informal (civilian) attire which had characterized the staff of the borstals from the late 1920s. The conditions and regimes in the youth custody centres were more closely aligned to the adult prison system rather than the unique structures and ideals that had underpinned borstal training.

From the provisions of the CJA 1982, magistrates were given extended powers to award sentences of youth custody as well as detention centre orders. However, the Act also placed limitations on the periods in which juvenile offenders, in particular, could

be detained. The minimum length of a detention centre order for boys aged 14-16 was reduced to three weeks with a maximum period of four months<sup>10</sup>. The maximum period of youth custody for boys and girls aged 15 and 16 was restricted to twelve months. Previously this age-group of juveniles could have been detained for up to 24 months, when sentenced to borstal training. As a result, a 'sentencing gap' appeared leading to offences which were deemed to merit a custodial sentence of two years or more being brought, by necessity, within the ambit of the s. 53(2) provisions (see chapter 3). In effect, this lowered the threshold by which juveniles could be sentenced to a period of s. 53(2) detention. Following the implementation of the CJA 1982, it was widely perceived that magistrates would make full use of their new powers and that there would be a rise in the use of youth custody and detention centre orders (Allen, 1991: 36). From a complex legal and sentencing framework, however, the treatment of juvenile offenders followed an unexpectedly progressive pathway. This was exemplified by a continuing expansion in the use of diversionary practice (police cautioning) and a dramatic decline in the use of custody.

### *Decriminalisation, diversion and decarceration*

Between 1981 and 1988, the numbers of juveniles sentenced by the courts more than halved from 62,000 to 30,000 (Allen, 1991: 33). Other figures show that between 1980 and 1990, the proportion of 14-16 year old boys cautioned for indictable offences doubled and for girls it increased by 50 per cent (Graham, 2010: 105). By 1990, and from the total juvenile offending population, two-thirds of boys aged 14-16 and nearly 9 out of 10 girls were being cautioned by the police (ibid: 105; see also Goldson, 2002: 389). This development in juvenile justice policy and practice was also mirrored by a dramatic decline in the use of custody for offenders under the age of 17. In 1979 - under a new Conservative government - more than 6,500 boys aged 14-16 were sentenced to custody and the figures increased to a peak of 7,700 in 1981<sup>11</sup> (Gelsthorpe and Morris, 1994: 974). From 1982/83, however, the numbers of juveniles sentenced to custody started to decline and this trend accelerated sharply throughout the 1980s: in 1983 a total of 6,700 males aged 14-16 were sentenced to custody and by 1988 the figures had more than halved to a total of 3,200 (Allen, 1991:

<sup>10</sup> This type of custodial provision was not available for girls under the age of 17.

<sup>11</sup> The figures for 1981 represent a high point in the use of custody for juvenile offenders.

31). Between 1988 and 1989 the numbers declined even more dramatically to 1,900 and in 1990, 1,400 boys aged 14-16 were sentenced to custody (Gelsthorpe and Morris, 1994: 974). The reduction in the use of custody for girls (under 17) was less clear-cut. From a relatively stable number of 100 girls per year sentenced to custody, the figures fluctuated to below 50 at certain points during the 1980s and again in 1990 (ibid: 974). Overall, however, the proportionate use of custody for the total number of juveniles proceeded against or cautioned declined from 8% in 1981 to just 1% in 1990 (ibid: 976).

### ***The use of s. 53(2) detention***

In contrast to the dramatic reduction in the use of custody for juvenile offenders during the 1980s, there was an overall rise in the number of juveniles sentenced to detention under s. 53(2) of the CYPA 1933 (see Table 2.3).

**Table 2.3 Juveniles sentenced to s. 53(2) detention from 1981 to 1990**

1981	1982	1983	1984	1985	1986	1987	1988	1989	1990
76	68	72	108	154	156	152	175	114	125

\*Total number of 1,198 juveniles

Figures obtained from the Criminal Statistics for England and Wales 1981-1990; see also Prison Statistics for England and Wales 1981-1990.

In 1984, and for the very first time, the number of juveniles sentenced to a period of s. 53(2) detention reached a total of more than 100. The actual figures for 1984 (n=108) represent a one-third increase from the preceding year and between 1983 and 1985 the figures more than doubled. Following an upward trend, the number of juveniles sentenced under the s. 53(2) provisions peaked to a total of 175 in 1988. At this point, the proportionate use of s. 53(2) detention had increased to 5% of the total number of custodial sentences awarded to juvenile offenders. This overall rise was, however, interrupted by a reduction in the figures between 1988 and 1989. At this time, the percentage decline (35%) corresponded with a similar decrease (41%) in the general use of custody for juvenile offenders. Nonetheless, the proportionate use of s. 53(2) detention increased from 5% in 1988 to 9% by 1990. It is also interesting to note that

within a range of violent and other very serious crimes, there was an increase in the use of the s. 53(2) sentence for juveniles convicted of burglary. Between 1985 and 1988 this latter offence constituted up to 20 per cent of all s. 53(2) sentences awarded (Jowitt, 1996: 16; see also chapter 3). This particular trend gave rise to speculation that the judges were using their powers to award periods of s. 53(2) detention as a method of circumventing the alternative maximum custodial sentence of 12 months youth custody (Godsland and Fielding, 1985: 283; see also Giller and Richardson, 1987: 20). The aim to limit the maximum terms of custody for juveniles by virtue of the CJA 1982 may therefore have inadvertently resulted in an increase in the use of s. 53(2) detention.

### *Other legislative changes and an overview*

The Criminal Justice Act 1988 further strengthened the criteria for imposing a custodial sentence and supported the use of alternative community-based penalties for serious and persistent juvenile offenders (under 17). With regard to the use of custody, the Act replaced detention centre orders and sentences to youth custody with a newly created single custodial sentence ‘detention in a young offender institution’ available for males aged 14-21 and females aged 15-21. The existing detention centres and youth custody centres were transformed into a single system of young offender institutions (YOIs) managed by the prison service. Custody for boys under the age of 14 and girls under the age of 15 was restricted to grave crimes and the use of s. 53 detention. Custodial placements for this latter group of offenders were restricted (exclusively) to alternative non-penal secure accommodation. These particular provisions together with the YOIs were available for all other s.53 offenders. The Children Act 1989 finally removed all civil care proceedings from the juvenile court and these matters were transferred to a newly created family proceedings court. From this development, a sharp distinction was drawn between children in need of care and protection and those charged with criminal offences. It is observed that there was, in effect, ‘a separation of the deprived and the delinquent’ (Gelsthorpe and Morris, 1994: 980-81; see also Graham, 2010: 108). The use of the care order as a disposal available to the court in criminal proceedings was also abolished. This latter measure reflected a substantial decline in the use of care orders during the 1980s, as an alternative disposal for child and adolescent offenders (Gelsthorpe and Morris, 1994: 975).

An overview of the 1980s reveals a period of juvenile justice shaped by the practices of diversion, decriminalization and decarceration. It has been described as ‘one of the most remarkably progressive periods of juvenile justice policy’ (Rutherford, 1995: 57). The dramatic decline in the use of custody for offenders under the age of 17 gave rise to the notion that abolition was achievable (Jones, 1989: i). Paradoxically, what has been called the ‘successful revolution’ in juvenile justice prevailed during a decade that was also defined by the assertion of authoritarianism, order and control (Jones, 1989). From this perspective, the developments in juvenile justice during the 1980s are all the more remarkable. In consideration of other broader social structures, the 1980s was a decade marked by continuing economic pressures as well as deepening social unrest and anxiety. In 1981 riots took place in Brixton, Toxteth and some other major cities (see Gilroy, 1987: 112). Unemployment figures rose to upwards of three million, and many working-class local communities were severely affected by the decimation of the steel and coal industries. The gap between the rich and the poor widened and there was increasing social inequality and social deprivation including child poverty (Adonis and Pollard, 1997: 11; Oppenheim, 1997: 18-20; Gordon et al., 2000: 8). Families from poorer backgrounds were increasingly marginalized from a mainstream capitalist society. These experiences may present serious individual, social and political challenges and consequences. Within this maelstrom, issues of crime and the treatment of offenders are highly susceptible to shifts in political ideology and popular discourse. From a prolonged period of decarceration during the 1980s, the direction of the juvenile justice system in the following decade took a very different pathway.

### **Custody and punishment revisited in the 1990s**

By the early 1990s there emerged a growing body of opinion that juvenile crime policy in particular, and penal liberalism in general had gone ‘too far’ (Goldson, 2002: 390). Popular and political discourse started to move towards a more punitive approach to the treatment of young offenders. However, before this took firm hold, between 1990 and 1991 there was a continuing reduction in the general use of custody for juvenile offenders, and a decrease in the numbers of juveniles sentenced to a period of s. 53(2) detention (see Table 2.4 below). Legislation in the form of the Criminal Justice Act (CJA) 1991 imposed further restrictions on the use of custody

for both adult and young offenders. Importantly, it abolished penal custody (detention in a young offender institution) for boys aged 14. With specific reference to offenders convicted of very serious crimes, the Act supported the use of early release on licence for long-term prisoners including juveniles sentenced to detention under the s. 53(2) provisions (see further comments below). Before going on to describe in some detail, other key events that shaped the youth justice system during the 1990s, the following section will briefly examine some of the main features of the CJA 1991 and its important implications for the sentencing of serious young offenders.

### ***Criminal Justice Act 1991***

The Criminal Justice Act 1991 introduced a new set of criteria which instructed the use of custody for both adult and young offenders. Centrally, s. 1 of the Act provided that custody would only be imposed if a court believed the offence to be so serious that only such a sentence could be justified. It also created new instructions for the courts in relation to the determination of appropriate custodial sentences. Section 2 of the Act provided that (a) the length of sentence must be commensurate with the seriousness of the offence and (b) in the case of a violent or sexual offence, for such longer term as, in the opinion of the court, is necessary to protect the public from serious harm. Sentencing policy was firmly underpinned by the principles of proportionality and ‘just deserts’ (see chapter 5). Moreover, the criteria for the use of custody provided by the Criminal Justice Act 1991 were also instructive to the use of s. 53(2) detention. With specific reference to child and adolescent offenders, the CJA 1991 in following the principles laid down in the CYPA 1933, re-asserted the need to balance welfare and proportionality. As part of this remit, s. 63 of the 1991 Act abolished the sentence of ‘detention in a young offender institution’ for boys aged 14. The minimum age for this main custodial sentence was raised to 15 for boys and remained at 15 for girls. Custodial sentences for all child offenders under the age of 15 were restricted to grave crimes and the use of section 53 detention.

Other measures introduced by the CJA 1991 included the extension of the legal definition of a *young person* from 14-16 years to 14-17 years (s. 68 and schedule 8). The effects of this were to bring 17 year old offenders within the ambit of the youth justice system for the very first time. This latter feature was compliant with rulings



from the United Nations Standard Minimum Rules for the Administration of Juvenile Justice also known as the Beijing Rules (adopted in 1985) and the UN Convention on the Rights of the Child (1989). These jointly provided that:

A child – defined as a person of below 18 years – shall be entitled to be dealt with under a jurisdiction separate from that for adults and should be subject to a range of dispositions and penalties that take into account his or her welfare and are different from those available for other offenders.

Section 70 of the CJA 1991 replaced the juvenile court with a newly created youth court and extended its jurisdiction to young people under the age of 18. In line with these developments, the scope of the s. 53(2) sentence was also extended to include 17-year old offenders for the first time (the previous maximum age was 16). From other conditions relating specifically to the s. 53(2) sentence, the 1991 Act provided that time spent on remand in custody would be taken into account when determining the length of a sentence (s.46). In addition, s.43 of the Act provided that juveniles sentenced to a period of s. 53(2) detention would be eligible for early release on licence usually after serving two-thirds of the sentence. Prior to the CJA 1991, time spent on remand in custody did not count towards the s. 53(2) sentence, these juveniles did not have to serve a minimum period of custody and they did not have to earn remission. Instead, the Secretary of State could release a young person on licence at any stage of the sentence following the recommendation of the parole board. In practice, however, most s. 53(2) detainees served well over two-thirds of their sentence (Ditchfield and Catan, 1992: 1). From the inclusion of time spent on remand in custody to eligibility for early release on licence, s. 53(2) detainees were brought in line with other categories of prisoners and a major anomaly was finally corrected.

### ***Events that shaped the youth justice system during the early to mid 1990s***

The early 1990s were characterized by growing concerns about youth crime generally and, in particular, persistent offending by children and young people (Hagell and Newburn, 1994). Such concerns were exacerbated by highly publicized incidents of joy-riding, violent disorder and young people offending whilst on court bail. There was a broad consensus that the police and the courts lacked the powers to deal effectively with persistent young offenders (ibid: 19). In early March 1993, the then

Home Secretary Kenneth Clarke announced that the use of custody would be extended to include persistent child offenders aged 12-14 years. It is observed that this 'effectively reversed a decarcerative trend in youth justice policy in respect of children of this age' (Goldson, 2002: 394). This period was also indelibly marked by an exceptionally grave and rare crime committed by two young boys. On the 12th February 1993 James Bulger (aged two) was abducted from a shopping centre in Merseyside and was later found murdered. Jon Venables and Robert Thompson, both aged 10 at the time of the offence, were subsequently convicted of the murder and sentenced to detention 'during Her Majesty's Pleasure' under the provisions of the CYPA 1933, s. 53(1). The trial judge described the killing as 'an act of unparalleled evil and barbarity' and told the boys that their conduct was 'both cunning and very wicked' (Fionda, 1998b: 78).

The murder of James Bulger gave rise to an unprecedented level of media attention, commentary and public debate. In addition to the nature of the crime and the characteristics of the two offenders, broader debates focused on the loss of innocence in childhood and the omnipresence of 'evil' in the young. Others have suggested that 'the case became a metaphor for children's 'lost innocence' and the triumph of 'evil' over 'good' (Scruton, 1997: 168). The crime was also perceived to be representative of a severely fractured and disrupted social and moral world. These features galvanized an authoritarian and punitive approach to the treatment of child and adolescent offenders (Fionda, 1998b: 84). Notions of punishment became transcendent to issues of age and vulnerability (see chapter 5). John Major the then Conservative prime minister asserted that the time had come for society '*to condemn a little more and understand a little less*' (cited in Goldson, 2006: 142). The notion that, '*prison works*' was proclaimed by a new Home Secretary, Michael Howard in 1993. Subsequent legislation supported the use of punishment, retribution and incarceration for persistent and serious youthful offenders. Moreover, the provisions for detaining the youngest child offenders (10-14) were significantly extended.

### ***Criminal Justice and Public Order Act 1994***

The Criminal Justice and Public Order Act 1994 provided a range of measures which supported the use of custody for child and adolescent offenders (under 18). Section 1

of the Act introduced a new custodial sentence, the Secure Training Order (STO), for persistent child offenders aged 12-14 years (inclusive). The length of these orders ranged from 6 months to a maximum period of 24 months. In addition, children were to serve these sentences in one of three newly created and privately run secure training centres (see Hagell et al., 2000). As a result of these measures, the use of custody for child offenders aged 12, 13 and 14 years was no longer restricted to grave crimes. Such restrictions in the use of custody were reserved exclusively for the youngest child offenders (aged 10 and 11). For juveniles aged 15-17 (inclusive), the maximum sentence of 'detention in a young offender institution' was doubled from 12 to 24 months by virtue of s. 17 of the Act. This measure provided the youth court with powers to award custodial sentences of up to 24 months for non-grave crimes. In line with this development, sentences of detention under the s. 53(2) provisions were reserved for offences that merited more than two years custody (see chapter 3).

With specific reference to juvenile offenders and grave crimes, s. 16 of the CJ&PO Act 1994 extended the range of offences for which child offenders aged 10-13 could be detained under the s. 53(2) provisions. Before this amendment, the use of the s. 53(2) sentence for child offenders under the age of 14 was principally restricted to crimes involving homicide. However, as a result of the 1994 Act, the s. 53(2) sentence was made equally available for both children aged 10-13 and young people aged 14-17 for the very first time. This marked a significant moment in the history of the s. 53(2) provisions with regard to the youngest child offenders. Furthermore, section 16 of the 1994 Act extended the criteria by which the s. 53(2) sentence could be applied. As a consequence, the sentence (as amended) was available in the following circumstances:

**(A)** Where a young person of at least 10 but not more than 17 years is convicted on indictment of (i) any offence punishable in the case of an adult with imprisonment for fourteen years or more, not being an offence the sentence for which is fixed by law or (ii) an indecent assault on a woman and **(B)** Where a young person aged 14-17 is convicted of: (i) causing death by dangerous driving or (ii) causing death by careless driving while under the influence of drink or drugs.

Where these conditions are met and if the court is of the opinion that none of the other methods in which the case may legally be dealt with is suitable, the court may sentence the offender to be detained for such period as may be specified in the sentence and where such a sentence has been passed the child or young person shall, during that period, be liable to be

detained in such place and on such conditions as the Secretary of State may direct or *arrange with any person*.

Section 53(2) of the CYPA 1933 (as amended in 1961, 1991, 1994)

The additional offences of indecent assault on a woman, causing death by dangerous driving and causing death by careless driving while under the influence of drink or drugs carried a maximum sentence of ten years imprisonment in the case of an adult offender. To this extent, the threshold for a sentence of detention under the provisions of the CYPA 1933, s. 53(2) was lowered. The measures provided by the CJ&POA 1994 not only supported the use of custody for child offenders under the age of 15, but they also increased the maximum custodial sentence for juveniles aged 15-17 and extended the criteria whereby juveniles from the age of 10 could be sentenced to long periods of detention.

### ***Other political and legislative changes from the mid to late 1990s***

There was little opposition to the Conservative government's criminal justice policy by New Labour which had also adopted a populist authoritarian position with regard to issues of law and order. In 1993, following an official visit to the United States, Tony Blair (as shadow Home Secretary) asserted that New Labour would be *tough on crime, tough on the causes of crime* (cited in Goldson, 2006: 142). Following the implementation of the Criminal Justice and Public Order Act 1994, however, ideas to radically overhaul the youth justice system were under consideration. In 1996 the Audit Commission published a report entitled *Misspent Youth: Young People and Crime*. This report essentially argued that the youth justice system was failing to reduce or prevent youth crime and that it was not cost-effective (p11-12). Other findings linked the incidence of youth offending with other problematic juvenile anti-social or 'nuisance' behaviours and emphasized the need for a coordinated and multi-agency approach (p. 96, 104). These ideas were incorporated into subsequent youth justice law and policy by the Labour government elected in May 1997. Following a number of consultation documents, a White paper entitled *No More Excuses: A new approach to tackling youth crime* (1997) incorporated a raft of proposals for reforming the youth justice system in England and Wales. The essential message 'there will be no more excuses', was underpinned by a marked shift towards

increasing the responsibility of children and young people involved in anti-social and offending behaviour as well as their parents. The White paper also proposed changes to the custodial provisions for child and adolescent offenders under the age of 18. The provisions incorporated into the subsequent Crime and Disorder Act 1998 were, therefore, complex and far-reaching.

### ***Crime and Disorder Act 1998***

The over-arching aim of the youth justice system was to prevent offending by children and young people (s. 37 of the Act). Within this broad remit, the legislation incorporated a complex mix of both welfare and punishment strategies (Fionda, 1999). The Act placed on statute several new orders of the court including the antisocial behaviour order (s.1), the parenting order (s.8), the reparation order (s. 67), the action plan order (s.69), and the child safety order (s.11). The system for cautioning juvenile offenders was overhauled and a final warning scheme was introduced (s.65). At the other end of the offending spectrum, changes were made to the custodial provisions available for offenders under the age of 18. Section 73 of the Act abolished the secure training order and 'detention in a young offender institution' and created a single generic custodial sentence, the detention and training order (DTO) for offenders aged 12-14 (persistent offenders only) and 15-17 (inclusive). In addition, the legislation extended the scope of the sentence to children aged 10 and 11 in special circumstances where specific public protection criteria in relation to further offending are met (Goldson, 2006: 143-144; Arthur, 2010: 104-106). A DTO could be served in either local authority secure accommodation or a secure training centre and a young offender institution. The length of these sentences are set at 4, 6, 8, 10, 12, 18 or 24 months with the first half of the sentence spent in custody and the remaining half spent in the community under supervision (Goldson, 2006: 143). Correspondingly, sentences of detention under the provisions of s. 53(2) of the CYPA 1933 were also to include an equal period of supervision in the community.

The 1998 Act also made major changes to the organization and operation of youth justice in England and Wales. In following the recommendations of the Audit Commission (1996), s.39 of the Act introduced a national network of multi-agency youth offending teams (YOTs). Methods of intervention were to be guided and

informed by effective evidence-based crime prevention practice (Boswell and Wedge, 2003: 12; see also Chapman and Hough, 1998). In relation to the overall management of the youth justice system, the Act established a new Youth Justice Board for England and Wales (s. 41). The YJB was assigned responsibility for the delivery and monitoring of all youth justice services. This included the provision of custodial placements for remanded and sentenced offenders under the age of 18 within a newly created juvenile secure estate, comprising local authority secure accommodation, secure training centres and young offender institutions. Centrally, the YJB introduced separate YOIs for male juvenile offenders aged 15-17. This facilitated a complete separation of juvenile detainees from young adults aged 18-21 within the male YOI system.

Amidst the many reforming elements of the Crime and Disorder Act 1998, one of the most controversial aspects (s. 34) was the abolition of the principle of '*doli incapax*' for child offenders aged 10-13. This removed the presumption that children under the age of 14 were incapable of guilt unless it could be proved by the prosecution that the child, at the time of the offence, had the maturity to recognize that what he or she was doing was wrong. As a consequence children as young as 10 are presumed to be capable of forming criminal intent and, as a result, are deemed to be culpable for their criminal actions (see chapter 5). A final vestige of the distinct nature of childhood was removed from the criminal justice system.

### ***Re-criminalisation and the use of custody from 1992 to 2002***

The 1990s was a period marked by the re-criminalisation of the young. As the decade progressed, the numbers of children and young people diverted from formal court proceedings decreased and there was a substantial rise in the number of criminal prosecutions. The rate of diversion from court (pre-court disposals) declined from 73.5 to 55.9 per cent between 1992 and 2003, leading to a consequent proportionate increase in prosecution (NACRO, 2005 cited in Bateman, 2006: 73-4). This trend corresponded with a large rise in the numbers of children and young people (under 18) sentenced to custody. It is suggested that 'recent analysis has illuminated an inverse correlation between the rate of diversion and the use of custody' (Bateman, 2006: 74). In 1992, a total of 3,344 young people aged between 15 and 17 years were

sentenced to immediate custody (Hagell, 2005: 152). By 1997, the numbers had increased to 5,118 males (aged 15-17) with approximately 200 young females (Criminal Statistics for England and Wales 1997: 164, 171). The rise continued unabated and in 2002 a total of 7,416 children and young people (aged 10-17) were sentenced to custody. This latter figure represents 8 per cent of the total number of juveniles sentenced by the courts (Criminal Statistics for England and Wales 2007: 36). Between 1992 and 2002 the use of custodial sentences for offenders under the age of 18 had more than doubled and the numbers of children and young people remanded to custody increased by 142 per cent (Goldson, 2006: 145). Although direct comparisons are problematic, the proportionate use of custody in 2002 is similar to that identified during the 1970s when the use of custody was at a peak level.

From a broader picture of the use of custody for juvenile offenders during the 1990s, the inclusion of 17 year old offenders from 1992 did have an immediate inflationary effect on the figures. This feature alone, however, does not explain the continuing rise in the custody figures throughout the 1990s and into the early 2000s. From a different perspective, precise changes in the patterns of juvenile offending and increasing offence-severity are very difficult to determine from official crime data. As a consequence, evidence from leading criminologists presents a complex picture. While it has been observed that the overall rates of recorded youth crime declined during the 1990s (Goldson, 2002a: 396), it would also appear that the absolute number of offences involving violence against the person remained relatively stable and there was a rise in other serious youth crime, most notably street robbery (Pitts and Bateman, 2005: 15). This latter crime, however, is particularly susceptible to the vagaries of media representation, popular fears, political reaction and targeted policing (see chapter 3). Notwithstanding these issues, the overall picture would appear to suggest that the fall in diversion and the rise in the use of custody during the 1990s did not *singularly* reflect any major changes in the nature of youthful offending, but were demonstrative of a more authoritarian and punitive approach to the treatment of child and adolescent offenders (Goldson, 2002a: 390-392; Graham, 2010: 111).

### **Developments in the use of s. 53(2) detention from 1991 to 2000**

Within the overall increase in the use of custody for juvenile offenders during the 1990s, there was also an unprecedented, dramatic and sustained rise in the number of offenders sentenced to longer terms of detention under s. 53(2) of the CYPA 1933. The following section examines the figures and isolates key periods in which the use of s. 53(2) detention was particularly intensified. The findings not only compliment and generally extend the ‘punitiveness’ thesis, but they also reveal a very contemporary as well as an unparalleled trend (see Table 2.4).

**Table 2.4 Juveniles sentenced to s. 53(2) detention from 1991 to 2000**

1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
102	93	315	387	391	609	722	593	607	561

\*Total number of 4,380 offenders. Following the implementation of the CJA 1991, the figures from 1993 include offenders aged 17.

Figures obtained from the Criminal Statistics for England and Wales 1991-2000 and the Prison Statistics 1991-2000.

Between 1991 and 2000 there was a more than five-fold increase in the number of offenders sentenced to longer periods of detention under the s. 53(2) provisions. These findings reveal that the rise in the use of s. 53(2) detention was greater than the cumulative increases in the general use of custody for offenders (under 18) during the same period. Within a climate of increasing punitiveness, therefore, not only were more young people sentenced to custody, but an increasing proportion of this population (up to 10%) were sentenced to longer periods of detention. It should be noted that the first very sharp and sudden increase in the use of the s. 53(2) sentence (1993) is explained (in part) by a cohort of 17-year old offenders, who as a result of the CJA 1991, were brought within the ambit of the sentence for the first time. However, this feature alone does not explain the continuing and inexorable rise in the use of the s. 53(2) sentence from the mid 1990s to 2000. In relation to age, increases in the use of the sentence were, to varying degrees, distributed across the lower (12-13) and upper (14-17) age-ranges. In addition, young males aged 15 and 16 years constituted a majority of those sentenced to a period of s. 53(2) detention (see further



comments below). From an examination of the cumulative figures (illustrated in Table 2.4) and most strikingly, between 1995 and 1997, there was an 85 per cent increase in the use of s. 53(2) detention. This finding, which coincided with the implementation of the Criminal Justice and Public Order Act 1994, reveals a particular (if somewhat partial) picture of the severity of the criminal law at that time. Conversely, there are also examples of where in order to circumvent a sentence of ‘detention in a young offender institution’ judges used their powers to award a period of s. 53(2) detention so that a placement in alternative secure accommodation could be considered (see *R v B in Ball*, 1998: 417)<sup>12</sup>. This use of the s. 53(2) sentence was restricted to rare and/or very exceptional circumstances and the practice ceased to be applicable following the introduction of the detention and training order<sup>13</sup>.

Figures from the present study also show that in 1997, over 700 offenders under the age of 18 were sentenced to a period of s. 53(2) detention - the highest figure ever recorded by a significant margin. These sentences were distributed across a broad spectrum of violent and other very serious crimes (see chapter 3). Although there was a subsequent dip in the figures, the use of this sentence was maintained at a high level. Between 1998 and 2000 an average of almost 600 offenders per year received a sentence of detention under the s. 53(2) provisions. Within the overall context of youth justice law and policy during the 1990s, these unprecedented findings appear to be both disproportionate to any rises in serious youth crime and entirely consistent with an increasingly punitive approach to the treatment of child and adolescent offenders. It is also important to further note that in consideration of specific age-groups and following the implementation of the Criminal Justice and Public Order Act 1994, the use of s. 53(2) detention for children aged 10 and 11 years was unusual and rare. There was, however, a proportionate rise in the use of this sentence for boys aged 12 and 13 years. Between 1996 and 2000, this latter age-group of boys were found to constitute up to 10 per cent of all those sentenced to detention under the s. 53(2) provisions. In association with this feature and with reference to the figures presented in Table 2.4, an overwhelming majority of the offenders sentenced under

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<sup>12</sup> These circumstances illuminate judicial consideration relating to issues of the welfare of a young person and the unsuitability of detention in a young offender institution in certain cases. The case of *R v B* involved a young female offender aged 15.

<sup>13</sup> The detention and training order which replaced ‘detention in a YOI’ allows for a greater degree of flexibility with regards to placements within the juvenile secure estate.

the s. 53(2) provisions are adolescent males aged 14-17. Within this latter age-range, boys aged 15 and 16 form the largest group. Girls were found to constitute up to approximately 6 per cent of those awarded a s. 53(2) sentence during the 1990s (see further comments on these issues in chapter 4).

### **Public protection, incapacitation and youth justice during the 2000s**

At the start of the twenty-first century, the prevention of youth crime remained at the heart of youth justice law and policy. However, while custody was viewed as an essential crime prevention strategy, there was also a move towards strengthening the availability and quality of alternative (non-custodial) community sentences. This most notably included the development of intensive supervision and surveillance programmes (ISSP) for serious and persistent child and adolescent offenders (Graham, 2010: 117). Between 2002 and 2007 there was a decline in the general use of custody for offenders under the age of 18 which reduced by almost one-quarter (23%), from approximately 7,500 to 5,800 (Criminal Statistics for England and Wales, 2007: 36). At the most serious end of the offending spectrum, however, the provisions for detaining juveniles to longer periods of detention were extended. Issues of public protection and the use of extended incapacitation (and supervision) for violent offenders – including the young – were moved to the centre of criminal justice and penal policy in England and Wales. These developments have led to a growing combined population of juvenile, young adult and adult offenders serving long-term custodial sentences.

With specific reference to offenders under the age of 18, consolidated legislation in the form of the *Powers of Criminal Courts (Sentencing) Act 2000* retained the use of longer periods of detention for juveniles convicted of certain grave or serious crimes (see details below). In addition, other extended (determinate and indeterminate) custodial sentences were introduced for ‘*violent and dangerous*’ offenders including children and young people from the age of 10. These latter measures reflected an increasing contemporary public anxiety relating to actual and perceived threats to personal safety and the risk of harm (see Bauman, 2000). Political responses sought to quell such anxieties by introducing increasingly severe and incapacitative penal sanctions for those who posed a serious risk to the public.

***Powers of Criminal Courts (Sentencing) Act 2000, sections 90, 91 and 92***

The provisions governing the detention of children and young people (up to the age of 18) convicted of murder were transferred from s. 53(1) of the CYPA 1933 to s. 90 of the Powers of Criminal Courts (Sentencing) Act 2000. This area of the criminal law has remained virtually unaltered since its original inception. The provisions for detaining juveniles (under 18) convicted of other grave crimes (excluding murder) were transferred from s. 53(2) of the CYPA 1933 (amended in 1961, 1991 and 1994) to ss. 91 and 92 of the PCC(S) Act 2000. This new law provided no substantive changes to the treatment of children and young people (aged 10-17) convicted of certain grave or very serious crimes. Others have observed that the PCC(S) Act 2000 as consolidating legislation ‘restate[d] existing sentencing law in a single statute without any substantive change’ (NACRO, 2002: 8). The main criteria for the use of juvenile long-term detention as formerly provided by the s. 53(2) provisions were incorporated into s. 91 of the PCC(S) Act 2000. A sentence of detention under the s.91 provisions was therefore available in such cases where a person under 18 is convicted on indictment of:

(A) an offence punishable in the case of a person aged 21 or over with imprisonment for 14 years or more, not being an offence the sentence for which is fixed by law; or (B) an offence under section 14 of the Sexual Offences Act 1956 (indecent assault on a woman); or (C) an offence under section 15 of that Act (indecent assault on a man) committed after 30<sup>th</sup> September 1997.

And where a person aged at least 14 but under 18 is convicted of an offence under:

(A) Section 1 of the Road Traffic Act 1988 (causing death by dangerous driving); or (B) Section 3A of that Act (causing death by careless driving while under the influence of drink or drugs).

The only change to the previous criteria (as revised in 1994) is the inclusion of offences under s. 15 of the Sexual Offences Act 1956 (indecent assault on a man) committed after 30 September 1997. It is, however, interesting to note that the term ‘*certain grave crimes*’ was erased from the new statute and replaced by ‘*certain serious offences*’. This change in language and tone appears to reflect the less specific and broadening scope of the sentence. In relation to other associated conditions which underpin the use of longer periods of detention for child and adolescent offenders, s. 91 of the PCC(S) Act 2000 restates that:

Where the court is of the opinion that none of the other methods in which the case may legally be dealt with is suitable, the court may sentence a child or young person to be detained for such period, not exceeding the maximum term of imprisonment with which the offence is punishable in the case of an adult offender (aged 21 or over), as may be specified in the sentence.

The criteria and conditions contained in s. 91 of the PCC(S) Act 2000 are, therefore, consistent with the previous statutory provisions. Correspondingly, those sentenced under the s. 91 provisions are liable by virtue of s. 92 of the Act to be detained in such place and under such conditions as the Secretary of State may direct or arrange with any person.

### ***The use of section 91 detention from 2001 to 2005***

The criminal statistics reveal that between 2001 and 2005, a total of 2,663 offenders under the age of 18 were sentenced to a period of detention under s.91 of the PCC(S) Act 2000 (see below). The annual figures for this five-year period show an overall small reduction in the use of s.91 detention for child and adolescent offenders. However, while the use of the s.91 sentence was susceptible to a degree of fluctuation, there was a sudden and dramatic increase in the figures for 2002. It is suggested that this latter feature, most pertinently, illuminates the vagaries of sentencing policy with some degree of clarity and precision (see Table 2.5).

**Table 2.5 Juveniles sentenced to s. 91 detention from 2001 to 2005**

2001	2002	2003	2004	2005
499	* 709	465	547	443

\*A total of 2,663 offenders under the age of 18

Figures obtained from the Criminal Statistics for England and Wales 2001-2005 and the Prison Statistics 2001-2005.

Between 2001 and 2005 an average of approximately 500 offenders (under the age of 18) per year were sentenced to a period of detention under the s.91 provisions. As previously indicated, these figures represent an overall reduction in the use of this sentence when compared to the mid to late 1990s. In 2002, however, the numbers of juveniles sentenced to a period of s.91 detention rose very sharply to a total of 709

offenders, a 42 per cent increase over the previous year, representing the second highest number of juveniles sentenced to a longer period of detention and one of the largest annual percentage increases ever recorded. This extraordinary growth is explained (in part) by a substantial rise in the use of long periods of detention for offenders under the age of 18 convicted of robbery (see further analysis in chapter 3). This period was marked by a sharp increase in the numbers of young people arrested and prosecuted for street robbery offences and, in 2002, a major street crime initiative resulted in even more prosecutions (Fitzgerald et al., 2003). These events lead to an increasing use of punitive (custodial) sanctions for juveniles convicted of street robbery and other related crimes. From the perspective of the present study, however, this highly specific element of punitiveness appears to have been fairly short-lived.

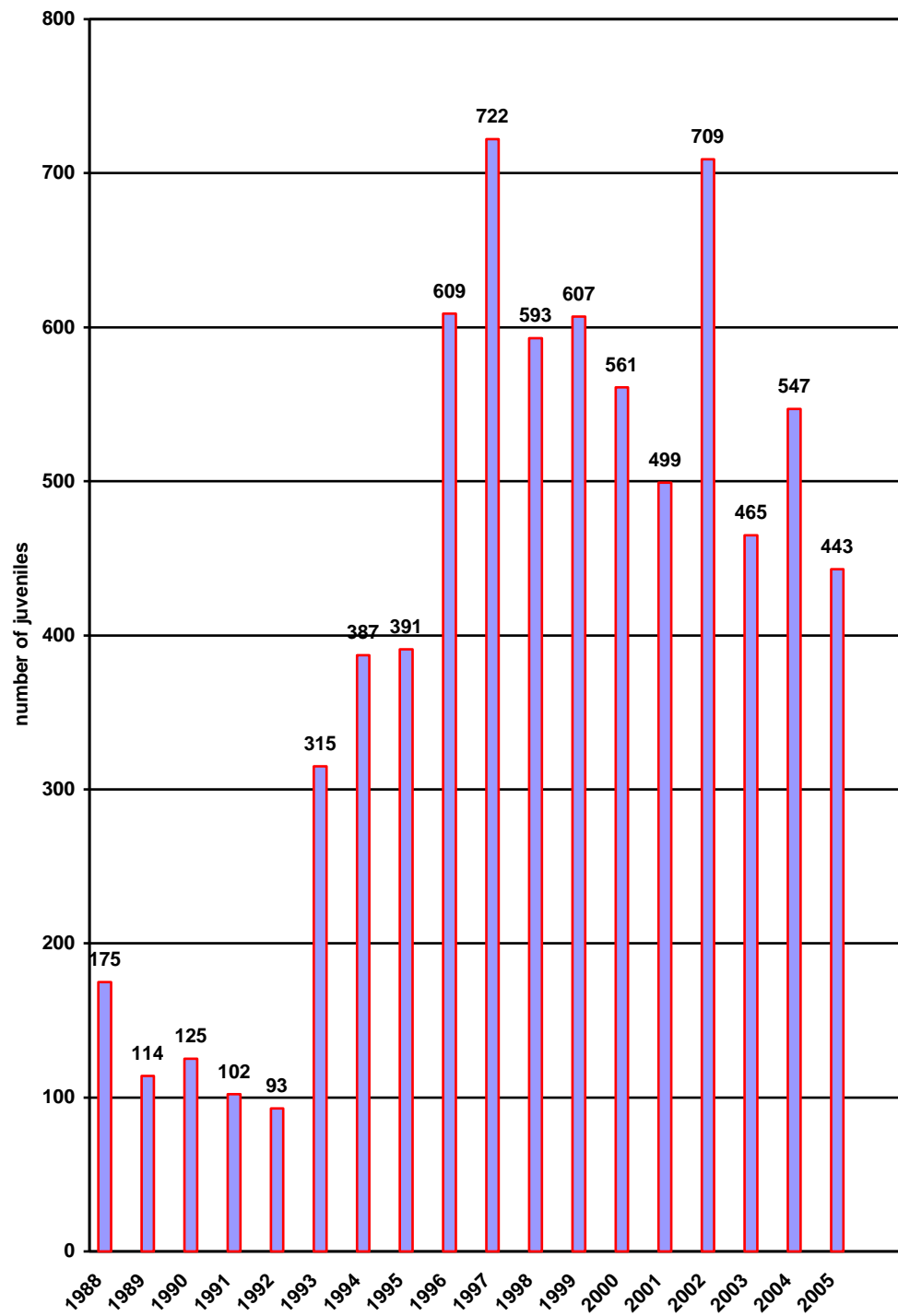
By 2003, the numbers of juveniles sentenced to a period of s.91 detention for robbery had decreased and as a result, the overall use of the sentence was reduced (see chapter 3). The downward trajectory in the use of the s. 91 sentence continued in 2005 (see below). It is suggested that the peaks and fluctuations in the use of this sentence appear to be independent of any linear increases in serious youth crime and much more reflective of changes within criminal justice policy and practice.

*An overview of the use of s. 53(2)/s. 91 detention from 1988 to 2005*

The following bar-chart provides an overview of the use of s. 53(2)/s.91 detention during an 18-year period from 1988 to 2005. The contents facilitate a complete view of both the extent to which juveniles have been sentenced to longer periods of detention and the variations and patterns in the use of this sentence. The numbers of s. 53(2)/s.91 offenders, while comparatively low, increased substantially during the 1990s and into the 2000s. At the same time, trends in the use of s. 53(2)/ s.91 detention cannot be explained by changes in the patterns of youthful crime alone. Rather, the overall increase and fluctuations in the use of s. 53(2)/ s.91 detention reflect the oscillatory shifts in youth justice policy and the welfare/punishment dichotomy that has [traditionally] shaped the treatment of child and adolescent offenders. Moreover, the use of this sentence has acted as a unique barometer in relation to how the law deals with juveniles convicted of very serious crimes and the

broader imperatives that have shaped the treatment of juvenile offenders more generally (see figure 2.6).

**Figure 1.6: The number of juveniles sentenced to detention under the s. 53(2)/s.91 provisions (1988 - 2005)**



The figures presented in the bar-chart provide a comprehensive view of the use of the s. 53(2)/ s.91 provisions during a tumultuous period in the history of youth justice. Up until 2003, only those juveniles convicted under the s.91 provisions could be sentenced to longer periods of detention. Subsequently, however, the Criminal Justice Act 2003, implemented in April 2005, introduced two additional extended custodial sentences for offenders convicted of specified serious violent or sexual offences. The use of these particular sentences is determined by a specific test of 'dangerousness'. The law, therefore, has moved towards the provision of distinct and separate custodial arrangements for the most serious and dangerous offenders - including the young. From these developments, the powers of the higher courts to award long terms of detention to offenders under the age of 18 have been considerably extended. The final section of this chapter examines the Criminal Justice Act 2003 in relation to the detention of 'violent and dangerous' juvenile offenders and considers the implications of this area of sentencing policy in tandem with the use of detention under the provisions of s.91 of the PCC(S) Act 2000.

### ***Criminal Justice Act 2003***

Within its varied and complex provisions, the Criminal Justice Act 2003 sets out a separate sentencing framework for offenders who have been convicted of a specified sexual or violent offence and have been assessed (by the courts) to be dangerous (Taylor et al., 2004: 253). In such cases, the higher courts have two sentencing options: (i) a determinate Extended Sentence of Imprisonment and (ii) an Indeterminate Sentence of Imprisonment for Public Protection (IPP). This area of law and policy, which is strongly underpinned by concepts of offender-risk and the use of incapacitation on the grounds of public protection, applies to offenders from the age of 10. In addition to a sentence of detention under the s.91 provisions, therefore, the higher courts have further powers to sentence 'violent and dangerous' children and young people (aged 10-17) to extended periods of detention. Under the provisions of section 226 of the CJA 2003, young people convicted of serious (specified) sexual or violent offences carrying a minimum penalty of 10 years imprisonment or more, and who are considered by the courts to be dangerous will be sentenced to an indeterminate sentence for public protection unless the court decides that (A) detention for life under s.91 of the PCC(S) Act 2000 is justified or (B) an extended



(determinate) sentence would be adequate in terms of public protection. In other cases, section 228 of the CJA 2003 provides that young people who have been convicted of specified sexual or violent offences (including offences carrying a minimum penalty of 10 years or more) and who are assessed (by the courts) to be dangerous, will also be eligible to receive a determinate extended sentence.

The criteria for dangerousness will be met in the cases where the court is of the opinion that ‘there is a significant risk to members of the public of serious harm occasioned by the commission by the offender of further specified offences’ (Taylor et al., 2004: 253). The dangerousness test is, therefore, based on assessments of a *continuing* significant risk of further serious violent or sexual offending by the offender. With regards to the dangerousness of a young person, the court must take into account all relevant information relating to the nature and circumstances of the offence, and may take into account patterns of offending behaviour and any other information concerning the offender (YJB, 2005: 12). The assessment of dangerousness in relation to the sentencing of violent and sexual juvenile offenders may incur considerable difficulties particularly in relation to the very young and/or the most vulnerable. These circumstances may, therefore, contribute to the continuing use of the s.91 sentence for certain violent and sexual offences that are deemed to necessitate longer periods of detention (see chapter 3). Table 2.7 (below) reveals the use of extended (determinate and indeterminate) sentences for offenders under the age of 18 in 2006 and 2007, together with the numbers of offenders sentenced to s.91 detention during the same period.

**Table 2.7 s.91 detention and other extended custodial sentences (2006-2007)**

	2006	2007
Section 91 Detention	461	398
*1. Determinate Extended Sentences	103	101
2. Indeterminate Sentences for Public Protection	45	61
<b>Totals</b>	<b>609</b>	<b>560</b>

\*1 and 2 refer respectively to sections 228 and 226 of the Criminal Justice Act 2003.

Figures obtained from the Sentencing Statistics for England and Wales (2006, 2007) published by the Ministry of Justice.

The data show that in 2007 there was a decrease in the numbers of offenders sentenced to detention under the s. 91 provisions. At the same time, following the implementation of the CJA 2003 in April 2005, the use of other extended (determinate and indeterminate) sentences was fairly rapid. Overall, the combined total figures for 2006 and 2007 are comparable to the numbers of offenders previously and exclusively sentenced to a period of s.91 detention. From the findings presented, it is interesting to observe the size of the population of '*violent and dangerous*' juveniles receiving extended (determinate and indeterminate) sentences. Within this population, the numbers of juveniles receiving Indeterminate Sentences for Public Protection are comparatively small but not insignificant and are rising. In addition, the Youth Justice Board has projected that from the early figures (2006-2007), the use of extended (determinate) sentences is likely to follow an upward trajectory (YJB, 2008). Moreover, the use of these latter sentences is likely to have an impact upon the s.91 sentence in relation to offences located at the most serious end of the spectrum. Contrastingly, section 287 of the CJA 2003 provides a three year minimum sentence for offenders aged 16 and 17 convicted, at the crown court, of firearm related offences. This provision, therefore, facilitates a further means by which s.91 sentences can be imposed (Easton and Piper, 2005: 257). From a long and complex history, further transformations in the use of the s.91 sentence are to be expected. In addition, while it is estimated that the number of offenders sentenced to a period of s.91 detention will plateau at around 400 per year, other projections indicate that there is likely to be an overall growth in the total population of young offenders serving long-term custodial sentences (YJB, 2008).

### **Concluding comments**

This chapter has attempted to describe the use of juvenile long-term detention not only from a legal perspective but taking account of a broad political, social and ideological context. As a result, the dramatic rises and fluctuations in the use of this sentence can be understood in a much broader light. It has shown that the use of the sentence appears to have more to do with prevailing political and societal perspectives and trends than with violent juvenile crime rates *per se*. From an historical perspective, questions about the appropriate use of punishment have played an important role in the treatment of children and young people who commit violent and

other serious crimes. This development has been increasingly shaped by political ideology and popular discourse driven, at least in part, by media coverage of unusual and rare crimes. In addition, other commentators have suggested that:

Treatment and punishment oriented reforms depend on a political climate in which various ideologies for viewing the nature of deviance can be supported.

Singer, 1996: 11

The control of delinquency is subject to continual modification and review, which in part reflects the definitions and modifications of the legal and social status of children within an historical, cultural and political context.

Asquith, 1983: 4

The conceptions of childhood and the role of children and young people in society are factors which have influenced and shaped the treatment of young offenders. From a contemporary 21<sup>st</sup> century context, the issues of youthfulness, immaturity and vulnerability are set against increasing criminal responsibility and culpability. These latter features have, to varying degrees, legitimized the use of punishment for the young (see chapter 5). For children and young people convicted of certain grave or very serious crimes, the use of long periods of detention remains an ultimate sanction.

## **CHAPTER 3**

### **Grave Crimes and Offence Characteristics**

This chapter aims to present a detailed examination of offences that have resulted in the sentencing of juveniles to long periods of detention. The first section of the chapter provides an overview of the main categories of offences that have been brought within the ambit of the s.91 sentence. Within this analysis, the study further illustrates the increases and fluctuations in the use of long-term detention, and reveals key trends in relation to specific categories of offences. These findings are based on figures obtained from official criminal statistics. The main body of the chapter incorporates an in-depth empirical study of 142 violent and other serious juvenile crimes resulting in the use of long periods of detention. The principal findings are based on the analysis of quantitative data obtained from interviews with 142 young offenders serving sentences of long-term detention. Other supplementary materials were obtained from individual inmate prison files. The methods of research have facilitated a broad view of the offences that have resulted in the use of longer periods of detention for juvenile offenders. It is also envisaged that the findings will provide a deep insight into the nature of serious juvenile criminality and stimulate debate with regards to issues of sentencing and punishment.

#### **Sentencing principles and guidance from the court of appeal**

The scope of the s.91 sentence is very wide-ranging in terms of the categories of offences to which it may be applied. At one end of the spectrum are serious sexual and violent offences including attempted murder, manslaughter, wounding with intent and rape. More broadly, the sentence is also available for a range of other serious juvenile crimes including robbery, burglary, criminal damage, arson and drugs offences. Other generally less serious offences to which the sentence can also be applied include theft and handling stolen goods, fraud and forgery and motoring offences. It is observed that:

To invoke Section 91 powers it is not necessary that the crime committed should be of exceptional gravity, such as attempted murder, manslaughter, wounding with intent or armed

robbery, but the 24 month limit should not be exceeded unless the offence is clearly one calling for a longer sentence.

Ball, McCormac and Stone, 2001: 444

A sentence of detention under the provisions of s. 91 is, therefore, not restricted to crimes of exceptional gravity, but the sentence should not be applied unless the offence is clearly one calling for a longer term of detention above the usual 24-month limit. However, the use of shorter periods of s.91 detention (less than 24 months) may still be applied to the youngest child offenders (under the age of 14) in certain serious cases. Apart from these special circumstances, and within contemporary juvenile sentencing policy, the use of s.91 detention is restricted to offences that merit a custodial sentence of more than 24 months. From this perspective, the law acknowledges that some crimes committed by juvenile offenders, although not exceptionally grave, do necessitate longer periods of detention.

From a long and complex history, the contemporary use of long-term detention with its broad ramifications for offenders has evoked considerable critical legal debate (see Thomas, 2001: 237). At the same time, the criteria for the use of long-term detention for juveniles have been the subject of legal interpretation and guidance from the Court of Appeal in a number of leading cases. The first important ruling was delivered in the case of *Fairhurst* [1986]<sup>14</sup>. At the time of this appeal, there was a 12-month limit on the alternative custodial sentence (youth custody) available for juvenile offenders (under 17 at that time). The appeal judges sought to discourage sentencers from exceeding the 12-month limit unless the case merited a significantly longer sentence, and it was ruled that the use of long-term detention should be reserved for those offences that would merit a custodial sentence of at least 2 years. This judgement was followed and updated in the case of *Wainfur* [1997]<sup>15</sup> taking into account the increased limit for juvenile custody to 24 months. In consequence the appeal judges re-stated that sentencers should not exceed the 24-month limit unless the offence merited a sentence *substantially* greater than 24 months. It was held that the use of long-term detention should generally be reserved for offences that warrant a custodial sentence of at least 3 years.

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<sup>14</sup> *Fairhurst* [1986] 8 Cr. App. R. (S.) 346.

<sup>15</sup> *Wainfur* [1997] 1 Cr. App. R. (S.) 43.

The guidance from the cases of *Fairhurst* and *Wainfur* did, however, create a ‘no man’s land’ for the marginal cases where an appropriate sentence fell somewhere between the 24-month limit (for an alternative custodial sentence) and the lower limit for a sentence of long-term detention – 36 months. In practice, when dealing with marginal cases, judges were encouraged to round sentences down to bring them within the scope of the alternative custodial sentence, which at that time was a sentence of detention in a YOI. The Lord Chief Justice, Lord Bingham, however, was of the opinion that rather than rounding down sentences, the judges were rounding them upwards and, in effect, passing longer sentences than might be strictly justified. Subsequently this anomaly was addressed by the Court of Appeal in the cases of *Mills and Others* [1998]<sup>16</sup>. In consideration of these appeals, Lord Bingham C.J. stated that while the courts should not exceed the 24-month limit (for detention) without much careful thought, if the court concludes that a longer sentence, *even if not that much longer than 24 months* is called for, then the court should impose a sentence of long-term detention for an appropriate period. This ruling, which overturned the previous guidance and remains authoritative, effectively broadened the scope of the sentence to include offences located at the less serious end of the grave-crimes spectrum. It has been observed that ‘the judiciary is thus encouraged to view the powers to impose longer custodial sentences above the usual maximum [24 months] as an extension of the continuum of conventional sentencing rather than an exceptional course’ (NACRO, 2002: 13; see also Godsland and Fielding, 1985).

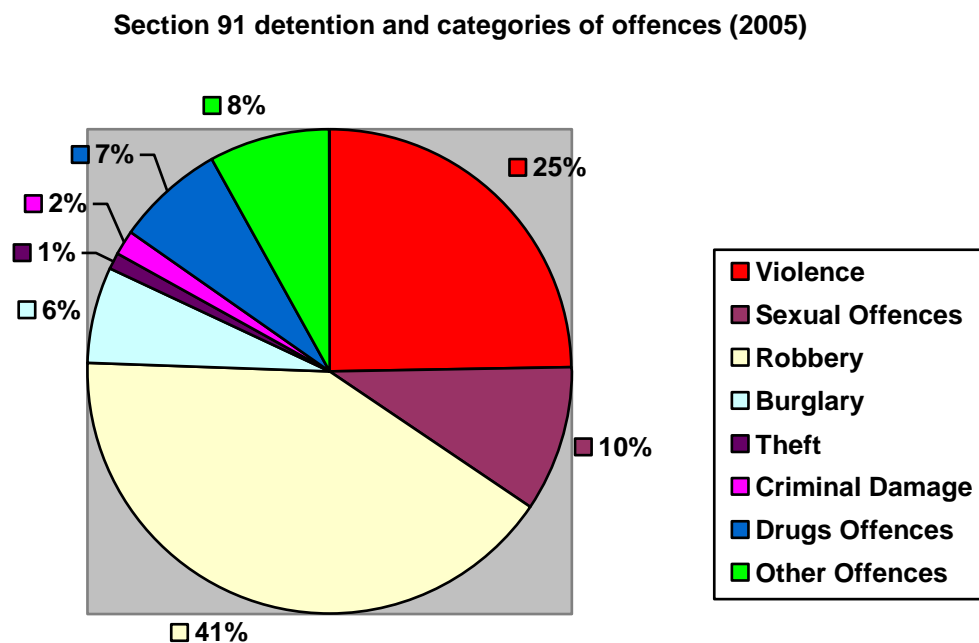
### **Offence categories and the use of s.91 detention: Before, during and post 2005<sup>17</sup>**

In 2005, from the total number of juveniles sentenced to a period of detention under the s.91 provisions (n=443), 1 in 4 (25%) had been convicted of a non-sexual violent offence against a person(s). This category of offences includes attempted murder, manslaughter and wounding with intent to cause grievous bodily harm; while a further 1 in 10 (10%) had been convicted of a serious sexual offence including rape and indecent assault. These figures, therefore, indicate that in 2005, just over one-third

<sup>16</sup> *Mills and Others* [1998] 2 Cr. App. R. (S.) 128

<sup>17</sup> The year 2005 is significant because it provides a picture of the use of s. 91 detention before the use of other extended (determinate and indeterminate) sentences for ‘violent and dangerous’ juveniles introduced by the CJA 2003 and which came into operation in April 2005. Subsequent figures for 2006 and 2007 further demonstrate the use of both sentences (see below).

(35%) of those detained under s.91 had been convicted of either a serious non-sexual or sexual violent offence against a person(s). In addition to these figures, and most notably, robbery constituted just over two-fifths (41%) of the s.91 sentences awarded. As previously indicated, serious robbery has been a persistent feature within the contemporary use of juvenile long-term detention (see additional comments below). Other figures also show that in addition to offences involving violence against the person and robbery, a further one-quarter (24%) of those sentenced to longer periods of detention in 2005, had been convicted of a very broad range of offences including: burglary (6%), theft and handling stolen goods (1%), criminal damage including arson (2%), drugs offences (7%) and other indictable offences (8%). The range and distribution of offences resulting in a period of s.91 detention (for 2005) are further illustrated in the following pie chart (see Diagram 3.1).



Figures obtained from the Criminal Statistics for England and Wales 2005

The picture which emerged in 2005 shows that within a wide range of offences, detention under the s.91 provisions was more typically reserved for offences involving either robbery or violence against the person. The largest proportion of these sentences had been awarded for robbery offences. The use of the s.91 provisions for burglary and other specified offences was found to be comparatively low and unusual or rare. However, if the figures for robbery and burglary are aggregated it can

be concluded that serious acquisitive crimes accounted for almost half (47%) of these sentences (see also Table 3.2, column 19 below).

*A review of offence categories and the use of s.91 detention from 1988 to 2005*

In an attempt to provide a broader understanding of the patterns and trends in relation to the use of s.91 detention, the study examines an 18-year period from 1988 to 2005. This particular time span marks the most tumultuous period (as previously illustrated) in the sentencing of juveniles to long-term detention. Within the increasing figures marked by peaks and fluctuations, other changes in the use of this sentence for particular categories of offences are revealed. The findings illuminate the subtle transformations in the use of juvenile long-term detention as well as the broader contours of sentencing policy (see Table 3.2).



**Table 3.2 Trends in the use of s. 53(2)/ s. 91 detention by offence categories (1988-2005)**

----- 10-16 year olds ---- -----] 10 to 17 year olds -----

Principal Offence	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
Violence against/ Person	21	23	12	25	21	60	69	67	97	104	98	111	108	102	138	97	129	110
Sexual Offences	15	16	23	13	14	20	22	39	51	56	45	58	48	46	33	32	34	43
Burglary	32	16	15	12	7	52	51	54	101	128	133	101	65	55	80	34	42	28
Robbery	82	44	52	45	41	137	191	192	275	345	241	258	268	231	378	228	259	182
Theft /Handling Stolen Goods	0	0	0	0	0	1	5	6	10	17	18	5	4	6	6	5	3	5
Criminal Damage (2)	18	14	21	7	7	24	23	18	33	32	20	29	27	21	17	15	20	7
Drugs Offences	0	0	0	0	2	4	7	5	13	18	23	29	32	23	24	38	34	32
Other offences	7	1	2	0	1	17	19	10	29	22	15	16	9	15	33	16	26	*36
<b>ALL OFFENCES</b>	<b>175</b>	<b>114</b>	<b>125</b>	<b>102</b>	<b>93</b>	<b>315</b>	<b>387</b>	<b>391</b>	<b>609</b>	<b>722</b>	<b>593</b>	<b>607</b>	<b>561</b>	<b>499</b>	<b>709</b>	<b>465</b>	<b>547</b>	<b>443</b>
<b>Total Sentenced</b>	<b>175</b>	<b>114</b>	<b>125</b>	<b>102</b>	<b>93</b>	<b>315</b>	<b>387</b>	<b>391</b>	<b>609</b>	<b>722</b>	<b>593</b>	<b>607</b>	<b>561</b>	<b>499</b>	<b>709</b>	<b>465</b>	<b>547</b>	<b>443</b>

- (1) s. 53(2) of the Children and Young Persons Act 1933 was repealed on 25 August 2000 and the provision was transferred to s.91/92 of the Powers of Criminal Courts (Sentencing) Act 2000.
- (2) Includes the offence of Arson
- (3) As a result of the Criminal Justice Act 1991 offenders aged 17 were brought within the ambit of the s.53(2)/ s.91 provisions for the first time and this change is reflected in the figures from 1993.

The figures in Table 3.2 illustrate both the categories of offences that have resulted in the use of juvenile long-term detention and the variations in the use of this sentence for particular types of violent and other serious juvenile crimes. It should be noted that the first sudden and very large increase in the use of this sentence between 1992 and 1993 is largely (although not exclusively) explained by the inclusion of offenders aged 17 for the first time. Taking this feature into account, the cumulative figures for the period from 1988 to 1995 are sharply contrasted with the dramatic increases and fluctuations in the use of s. 53(2)/s.91 detention since 1996<sup>18</sup>. Over a ten-year period from 1996 to 2005, between 97 and 138 juveniles per year were sentenced to s. 53(2)/s.91 detention for offences involving serious (non-sexual) violence against the person. Despite a slight increase since 2003, these offences constituted between 20% and 25% of the total number of offences (per year) awarded this sentence. This was a consistent and noteworthy trend. Similarly, the number of juveniles sentenced to longer periods of detention for serious sexual offences has also been fairly consistent: between 1996 and 2005, an average of 44 young people per year were sentenced under the s. 53(2)/s.91 provisions, constituting less than 10% of the total.

In line with earlier studies, the single largest proportion of s.91 sentences are awarded to juveniles convicted of robbery (Dunlop and Frankenburg, 1982; NACRO, 1988; Ditchfield and Catan, 1992; Stephens, 1995). Between 1996 and 2005 an average of 267 juveniles per year were sentenced to a longer period of detention following a conviction for robbery, peaking at 378 in 2002 and constituting over half (53%) of all s.91 sentences before falling back to 182 (41% of the total) in 2005. The overall large growth in the use of longer periods of detention for robbery offences has reflected the rise in the numbers of juveniles convicted of robbery, although this does not tell the whole story. For example, the sudden and dramatic peaks in the numbers (1996-1997 and 2002) coincided with changes to sentencing policy which promoted the use of punitive (custodial) sentences for juveniles convicted of serious crimes. In 2002, a focus on youth street crime together with an undercurrent of moral panic, contributed to more criminal convictions for robbery cases, an increase in the use of custody for these offenders and a sudden large rise in the numbers sentenced to longer periods of detention. While the use of juvenile long-term detention for robbery cases has

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<sup>18</sup> For the purposes of this part of the research, the analysis includes comparative figures across an 18-year period, although for certain categories of offences the analysis focuses on the period since 1996.

subsequently decreased, these crimes appear to be particularly susceptible to intermittent moral panics and punitive sentencing.

It is also interesting to observe that between 1996 and 2002, there was a marked increase in the use of longer periods of detention for juveniles convicted of burglary. At its peak in 1998, over one-fifth (22%) of the juveniles sentenced to a long period of detention had been convicted of burglary. Since 2003, however, there has been a large decline in the use of s. 91 detention for juveniles convicted of burglary, with such offences constituting approximately 6% of the total (see Table 3.2). Other important changes show that in 1990, a significant proportion (17%) had been convicted of offences involving criminal damage including, most specifically, arson. Although the actual numbers have remained fairly consistent, there has been a decrease in the proportion of s.91 sentences awarded for this type of offending – down to less than 2% in 2005. In contrast, since 1996 there has been a steady increase in the use of s.91 sentences for drugs offences, although the actual numbers are comparatively low. In 2005, drugs offences constituted 7% of the total number of offences for which a period of s. 91 detention had been awarded. In summary, the cumulative findings have identified a decrease in the use of longer periods of detention for certain categories of offences located at the less serious end of the grave-crimes spectrum.

### ***Trends in the use of s. 91 detention from 2006 to 2007***

The criminal statistics for 2006 and 2007 show an overall decrease in the total number of juveniles sentenced to detention under the s.91 provisions<sup>19</sup>. In 2006, a total of 461 juveniles had received this sentence, compared to 398 juveniles in 2007, an overall reduction of 14 per cent. The most notable decrease was found in relation to convictions for robbery, while figures relating to serious violent offences against the person (excluding sexual offences) increased (see Table 3.3).

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<sup>19</sup> Sentencing Statistics for England and Wales, 2007 published by the Ministry of Justice (2008) at [www.justice.gov.uk/docs/sentencing-statistics](http://www.justice.gov.uk/docs/sentencing-statistics)

**Table 3.3 The use of s.91 detention in 2006 and 2007 by offence categories**

	Violence Against the person	Sexual Offences	Burglary	Robbery	Criminal Damage	Drugs Offences	Other Offences	Total
<b>2006</b>	<b>134</b> (29%)	<b>24</b> (5%)	<b>24</b> (5%)	<b>210</b> (46%)	<b>17</b> (4%)	<b>24</b> (5%)	<b>28</b> (6%)	<b>461</b> 100%
<b>2007</b>	<b>130</b> (33%)	<b>33</b> (8%)	<b>23</b> (6%)	<b>151</b> (38%)	<b>11</b> (3%)	<b>21</b> (5%)	<b>29</b> (7%)	<b>398</b> 100%

The reduction in the use of the s.91 sentence reflects a fall in the numbers of young offenders sentenced for all crimes and a decrease in the general use of custody for juveniles (Graham, 2010: 106). Within the overall downward trajectory in the use of the s.91 provisions the figures confirm that fewer juveniles were sentenced to longer periods of detention for offences involving robbery. In contrast, however, there was a rise in the proportionate use of this sentence for serious violent offences against the person. As a result, the use of s.91 detention during this period appears to have become more concentrated on offences located at the most serious end of the grave-crimes spectrum.

In addition to the juveniles convicted of violent offences against the person under the s. 91 provisions, since April 2005 other juveniles have met the dangerousness criteria and received determinate and indeterminate sentences for public protection under the provisions of ss. 226 and 228 of the Criminal Justice Act 2003 (see also chapter 2). In 2007 a total of **101** juveniles received a determinate Extended Sentence and another **61** juveniles were awarded an Indeterminate Sentence of Imprisonment for Public Protection (Ministry of Justice, 2008: 36). It would appear that the overall use of longer custodial sentences for juveniles convicted of serious violent offences against the person doubled during the period between 2005 and 2007. Over **300** juveniles received either a s.91 sentence or an extended sentence of imprisonment for serious violent crimes in 2007. These latter findings may have been a response to the rise in the numbers of under 18s convicted of violence against the person during 2005/6, although the figures were declining in 2007 (Pople and Smith, 2010: 71). As an alternative explanation, therefore, the findings may also reflect the broader

imperatives of contemporary criminal justice policy relating to the issue of public protection and the incapacitation of violent offenders.

### **An empirical study of key offence characteristics**

The next section aims to present a more detailed picture of the types of offences that have resulted in the use of juvenile long-term detention. The main findings are based on empirical data collected from interviews with 142 young prisoners and from official reports (including court records and pre-sentence reports) contained within individual inmate prison files. Uniquely, the study incorporates a range of offence, offender and victim characteristics in an attempt to provide a broad view of violent and serious juvenile criminality and the use of long periods of detention. Based on the criteria of harm and culpability established by the Sentencing Guidelines Council to assess offence-seriousness (see below), the gradations of offence-gravity are explored. By developing a violence scale and applying it to the analysis of harm, the characteristics of the victims and the impact of victim vulnerability are carefully considered<sup>20</sup>. In the first instance, the research provides an overview of the principal offences for which the respondents in this study had been convicted and a summary of other associated secondary offences which provide a more complete picture of the crimes as a whole. In addition, the study charts the number of respondents who were also convicted (at the same time) of other separate crimes. This latter data illuminates the versatility and diversity of offending for particular serious juvenile offenders.

### ***Principal Index Offences***

The empirical offence data reveal the broad range of offences that have been brought within the ambit of juvenile long-term detention. Collectively, the respondents in the present study were convicted of very serious violent crimes against the person, including sexual offences, as well as other serious violent and non-violent crimes (see Table 3.4). Although variable in nature and form, the index offences are at the same time, unified in law by their seriousness and distinguishable in terms of the gradations in levels of harmfulness.

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<sup>20</sup> A comparable study examining the nature of, and circumstances surrounding violent crime in male adult offenders was conducted by Genders and Morrison (1996).

**Table 3.4 Principal index offences**

Principal Index Offences	Numbers and Percentages
<b>Violence against the person:</b>	
<i>Attempted Murder</i>	2 (1%)
<i>Wounding with Intent/Grievous Bodily Harm</i>	30 (21%)
<i>Assault Occasioning Bodily harm</i>	1 (1%)
<b>Sub Total</b>	<b>33 (23%)</b>
<b>Sexual offences:</b>	
<i>Rape of a Female</i>	10 (7%)
<i>Rape of a Male</i>	2 (1%)
<i>Attempted Rape of a Female</i>	1 (1%)
<b>Sub Total</b>	<b>13 (9%)</b>
<b>Robbery:</b>	
<i>Armed Robbery of Commercial Premises</i>	11 (8%)
<i>Robbery of Commercial Premises</i>	28 (20%)
<i>Armed Street Robbery (Firearm/ Imitation)</i>	4 (3%)
<i>Street Robbery</i>	33 (23%)
<b>Sub Total</b>	<b>76 (54%)</b>
<b>Burglary:</b>	
<i>Aggravated Burglary (of a dwelling)</i>	10 (7%)
<i>Burglary (of a dwelling)</i>	4 (3%)
<b>Sub Total</b>	<b>14 (10%)</b>
<b>Other Offences:</b>	
<i>Criminal Damage including Arson</i>	2 (1%)
<i>Drugs Offences</i>	4 (3%)
<b>Sub Total</b>	<b>6 (4%)</b>
<b>GRAND TOTAL</b>	<b>*142 (100%)</b>

The percentage figures have been rounded to the nearest whole numbers

\* The figures include 5 female respondents convicted of wounding with intent (2); commercial robbery (1); street robbery (1); burglary (1).

The figures reveal that 1 in 3 respondents had been sentenced for crimes involving serious violence against the person including sexual offences. This sub-group is likely to comprise those juveniles for whom the ‘dangerousness’ provisions under the Criminal Justice Act 2003, could be applicable. However, while serious violent crimes against the person (non-sexual and sexual) constituted a comparatively small

proportion of the offences featured in this study, the use of violence and/or threats of serious harm (with weapons) were found to be prevalent amongst other offence categories (see below). The single largest category of offences that had resulted in the use of long-term detention was robbery, comprising over half (54%) of the respondents. Of this group, almost equal proportions had been convicted of commercial robbery (39/76) and street robbery (37/76). 1 in 5 (11% of the total sample) had been convicted of an armed robbery involving imitation or real firearms. In five other cases, respondents had been in possession of a firearm during the course of a robbery<sup>21</sup> and a sizeable proportion of those convicted of commercial robbery (36%) and street robbery (41%) had been in possession of other weapons during the commission of the index offence (see further comments below).

Only 1 in 10 respondents had been sentenced for burglary, most typically aggravated burglary of an occupied dwelling (10/14 cases). Altogether, almost two-thirds of the respondents (63%) had been sentenced following a conviction for either robbery or burglary. This finding could be indicative of the dominance of acquisitive crimes motivated by material gain and possibly excitement as opposed to the commission of violence with the sole intention to cause physical harm to others. Finally, there were 4 male respondents convicted of Class A drugs offences, and 2 others convicted of criminal damage. The offence profile of the present study, therefore, closely reflects the national picture confirming a broad range of offences and the historical role of robbery offences in attracting sentences of juvenile long-term detention.

### *Single and multiple index offences*

One in four respondents had been sentenced for multiple repeat serious crimes, and these offenders were most typically concentrated amongst those convicted of robbery (see Table 3.5).

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<sup>21</sup> These five cases were not specifically recorded as armed robberies, although other evidence reveals that the respondents had been in possession of a firearm during the course of a robbery. In 2 of these cases, firearms had remained concealed during the crime.

**Table 3.5      Single and multiple index offences**

<b>Principal Index Offence</b>	<b>(A) 1 Single Offence</b>	<b>(B) Multiple Offences (2-3)</b>	<b>(C) Multiple Offences (4 or More)</b>	<b>Number of Offenders</b>
Attempted Murder	2	•	•	2
Wounding with Intent	27	3	1	31
Sexual Offences	12	1	•	13
All Types of Robbery	51	16	9	76
Aggravated Burglary or Burglary	12	2	•	14
Criminal Damage	2	•	•	2
Drugs Offences	1	2	1	4
<b>TOTALS</b>	<b>107 (75%)</b>	<b>24 (17%)</b>	<b>11 (8%)</b>	<b>142 (100%)</b>

A comprehensive view of the figures reveals that in relation to the respondents convicted of serious violence against the person (non-sexual and sexual), a large majority (41/46) had been sentenced to a longer period of detention for one single violent crime. This sub-sample comprises those cases where the sentence had been awarded to juveniles convicted of a ‘one-off’ (singular) very serious violent crime. Only a very small population of respondents had been sentenced for multiple repeat serious violent offences against the person. This latter finding is consistent with other research showing that repeat serious violence by juveniles is atypical (Tolan and Gorman-Smith, 1998: 72). In comparison, 1 in 3 respondents sentenced for robbery had been convicted of multiple repeat offences. This latter population constitutes 18% of the total sample. Additionally, although the numbers are very small, those sentenced for drugs offences had typically been convicted of multiple repeat crimes. Cumulatively, however, the main findings show that in a large majority of the cases (75%), the sentence was applied to single very serious offences, and only in robbery was there particular evidence of the sentence being passed for multiple repeat offences<sup>22</sup>.

<sup>22</sup> It is important to note that in the later sections of this chapter, detailed analysis of the principal index offences includes one index offence for each of the respondents (n=142). For those convicted of multiple repeat offences, the most serious offence was selected for analysis.



In conjunction with a range of principal index offences, the presentation of other associated secondary offence characteristics provides a broader view of the crimes that are featured in this study. The research also isolates those young offenders who were convicted and sentenced by the same court for other outstanding and separate crimes (see Table 3.6).

**Table 3.6 Associated secondary offences and other separate crimes**

Principal Index Offence	Associated Secondary Offences and other Separate Crimes [recorded in blue]	Number of young Offenders
<b>Attempted Murder (n=2)</b>	Violent Disorder, Affray and Possession of an Offensive Weapon	1
<b>Wounding with Intent/ GBH (n=31)</b>	Violent Disorder Affray False Imprisonment and Indecent Assault False Imprisonment and Robbery Kidnapping and Robbery  <i>9 other young offenders were convicted of separate crimes: Affray and Robbery (1); Burglary (1); Robbery (7)</i>	4 1 1 1 1  9 (29%)
<b>Rape and Attempted Rape (n=13)</b>	Indecent Assault Aiding and Abetting Rape Gross Indecency against a Male and Indecent Assault  <i>2 other young offenders were convicted of separate crimes: Indecent Assault (1); Attempted Robbery (1)</i>	4 1 1  2 (15%)
<b>Robbery (n=76)</b>	Possession of Firearm/ Imitation Firearm Affray Kidnapping and Blackmail False Imprisonment False Imprisonment and Possession of an offensive weapon False Imprisonment and Criminal Damage Actual Bodily Harm Attempted Robbery Conspiracy to Rob  <i>14 other young offenders were convicted of separate crimes: Attempted Robbery (4); Aggravated Burglary (1); Actual Bodily Harm (2); Attempted Robbery and Actual Bodily Harm (1); Burglary (4); Possession of Drugs (1); Fraud (1)</i>	8 1 1 1 1 1 3 1 1  14 (18%)
<b>Aggravated Burglary and Burglary (n=14)</b>	False Imprisonment  <i>3 other young offenders were convicted of separate crimes: Robbery (1); Attempted Burglary (1); Burglary and Handling Stolen Goods (1).</i>	2  3 (21%)
<b>Criminal Damage (n=2)</b>	<i>1 young offender was convicted of another separate crime: Burglary (1)</i>	1 (50%)
<b>Drugs Offences (n=4)</b>	Possession of a firearm and assault	1

NB: The numbers included in column 1 represent the total number of principal index offences (n=142).

The presentation of principal and secondary index offence data provides not only a broader overview of individual crimes, but also illuminates aspects of the contextual backgrounds in which certain crimes had taken place. Cumulatively, the findings show that 1 in 4 index offences incorporated multiple offence characteristics. Amongst those respondents convicted of a serious non-sexual violent offence against the person (including 2 cases of attempted murder), over one-quarter of these crimes (27%) had involved secondary offences including, violent disorder and affray. This particular finding shows that the context in which some serious juvenile violence occurs is associated with incidents of public disorder involving groups of young males. The empirical data also show that for the respondents convicted of robbery, while a majority did not have other charges, almost one-quarter of the robbery cases (24%) had involved other secondary offences including the possession of a firearm, kidnapping and false imprisonment. These particular features, however, while representative of the most serious cases of juvenile robbery were either atypical (the possession of a firearm<sup>23</sup>) or comparatively unusual.

Other figures illustrated in Table 3.6 also show that 1 in 5 respondents (all males) had been convicted (at the same time) of other outstanding and separate crimes. From this finding a comparison between the principal index offence and the range of other types of crimes illuminates the diversity and versatility in offending for these offenders. In particular, just over one-quarter (27%) of respondents convicted of a serious (non-sexual) violent offence against the person, were also convicted and sentenced at the same time for other crimes including, most typically, robbery. This finding alludes to elements of diversity in offending with an escalation in the use of violence. For some violent juvenile offenders patterns of offending incorporated a range of offences with varying degrees of severity. A minority (18%) of the respondents whose index offence was robbery had also been convicted at the same time of other separate crimes including attempted robbery, burglary and actual bodily harm. Most notably, therefore, concurrent offending in these cases appeared to be focused on serious and less serious acquisitive crimes. As a result, the versatility in offending was found to be

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<sup>23</sup> It should be noted that the figures included in Table 3.6 exclude 7 male respondents who had been convicted of armed robbery, although the possession of a firearm was not recorded as a separate secondary offence. In addition 5 other male respondents had also been in possession of a firearm during the course of a robbery. See also further section on 'juvenile robbery and firearms' below.

particularly prevalent in the respondents convicted of serious violent crimes against the person (see chapter 4).

### **The index offences and offence-seriousness**

The seriousness of an offence is determined by two main parameters: the culpability of the offender and the harm caused or risked being caused by the offence.

Sentencing Guidelines Council, 2005: 1.4

The next layer of the study aims to shed more light on the seriousness of the index offences from the perspective of key offence, offender and victim characteristics. From an analysis of 140 principal index offences, the study has examined the two main parameters that, from a legal perspective, determine offence-seriousness: (i) the culpability of the offender and (ii) the degree of harmfulness caused or risked by the offence (see von Hirsch, 1998a: 185). The research is mindful of the guiding principle that informs and instructs contemporary sentencing policy: ‘harm must always be judged in the light of culpability’ (Sentencing Guidelines Council, 2005: s 1.4).

As a starting point, it is broadly recognized that the measurement of criminal harm is a complex process determined by a range of factors including the nature and circumstances of the offence and the characteristics of victims. From a theoretical perspective, it has been suggested that the impact of a crime upon a victim’s standard of living provides a useful criterion for the assessment of criminal harm (von Hirsch and Jareborg, 1991; von Hirsch, 1998a: 186-188). The gravity of harms can be ranked according to how much they typically reduce a person’s standard of living (von Hirsch, 1998a: 186). Within this framework, the impact of the crime upon a person’s well-being or quality of life is likely to be determined by the characteristics and circumstances of the victim (see further discussion in chapter 5).

### ***Measures of violence and gradations of criminal harm***

Central to the exploration of offence-seriousness, this research assesses the use of violence – as a key measure of gravity - and the gradations of harm caused to victims.

In an attempt to analyze systematically these features across the sample of index offences, the study utilizes a grid that maps out six key measures of harm. The grid essentially provides a framework from which measures of violence and gradations of criminal harm can be constructed (see diagram 3.7).

**Diagram 3.7 Scales of violence incorporating 6 measures of harm**

<b>Scales of Violence</b>	<b>Measures of violence and gradations of harm</b>
<b>I</b>	The use of violence to injure + the use of a weapon to inflict physical injury
<b>II</b>	Violence with no weapons (kicks, punches etc) combined with the use of a weapon to threaten further violence and harm.
<b>III</b>	Violence to injure (kicks, punches etc) with no weapons.
<b>IV</b>	Threats of violence and serious harm with a weapon - no physical injury.
<b>V</b>	Threats of violence and harm without a weapon - no physical injury.
<b>VI</b>	A concealed weapon only, no weapons, no violence and no threats of harm.

The first three measures (I-III) identify crimes in which offenders had used violence to physically injure their victims. These distinguish offences that involved the use of weapons either to inflict very serious physical injury (I) or to threaten victims with further serious harm (II), and those in which the use of violence did not involve any weapons (III). The next two measures in the violence scale (IV-V) include offences in which there was no actual violence although offenders had either used weapons to threaten serious harm (IV) or victims had been threatened without the presence of weapons (V). The final measure (VI) distinguishes the comparatively small number of offences in which there was no use of violence and no threats of harm. All the index offences (n=140) have been analyzed in accordance with the violence scale and the attributed six measures of harm. It should, be emphasized that the scales of violence are not intended to represent a strictly linear measurement of offence-seriousness, although they do provide a useful guide in which to describe and analyze key offence characteristics. It is recognized that in addition to the presence and absence of physical injury, victims of violence and those threatened with serious harm are likely to experience psychological trauma, which may have a long term impact, especially upon those identified as being particularly vulnerable.

From a total of 140 index offences, three-fifths (61%) had involved the use of violence resulting in varying levels of physical injury to victims (Violence Scales I-III). Table 3.8 (see below) shows that these include specified violent offences against the person as well as cases of robbery and burglary. The use of a weapon to either inflict serious physical injury or to threaten further harms was found to be present in a majority (50/85) of these cases. Just under two-fifths of the index offences had not caused physical injury to victims (Violence scales IV-VI), although in most of these cases (43/55) the offenders had threatened violence. In only 8% of the cases analyzed had the juveniles not used or threatened violence (see Table 3.8, column 1).

**Table 3.8 Violence scales (I-VI) and categories of index offences**

Violence and Threats of Harm Violence Scales I-VI	Categories of Index Offences			
	Violence against the Person & *Sexual Offences	Robbery	Burglary	Other Offences
<i>Use of violence to inflict physical injury Violence Scales I-III</i>				
Violence – with a weapon (s) (37)	26 (56%)	9 (12%)	2 (14%)	0
Violence without a weapon + other threats of harm with a weapon (s) (13)	1+*4 (11%)	6 (8%)	2 (14%)	0
Violence – no weapons used (35)	6+*9 (33%)	17 (23%)	2 (14%)	1 (17%)
<b>Sub Total = 85 (61%)</b>	<b>46 (100%)</b>	<b>32(43%)</b>	<b>6 (43%)</b>	<b>1 (17%)</b>
<i>Threats of violence and harm Violence Scales IV-V</i>				
Threats of violence – with a weapon (s) (34)	0	30 (40%)	2 (14%)	2 (33%)
Threats of violence – no weapons used (9)	0	8 (11%)	1 (7%)	0
<b>Sub Total = 43 (31%)</b>	<b>0</b>	<b>38(51%)</b>	<b>3 (21%)</b>	<b>2 (33%)</b>
<i>Violence Scale VI</i>				
No violence and no threats of harm (12)	0	4 (5%)	5 (36%)	3 (50%)
<b>Sub Total = 12 (8%)</b>	<b>0</b>	<b>4 (5%)</b>	<b>5 (36%)</b>	<b>3 (50%)</b>
<b>Grand Total 140 (100%)</b>	<b>46</b>	<b>74</b>	<b>14</b>	<b>6</b>

NB: The percentage calculations for the offences of robbery are based on 74 cases. (Data for 2 cases is missing). The percentage calculations for each of the 3 sub-totals are based on 140 cases

Column 2: Violent offences include attempted murder, wounding/GBH (n=33). **Separate figures are included for 13 sexual offences (\*)**.

Column 5: Other offences are criminal damage (2) and drugs offences (4).

### ***Violence Scale I-III the use of violence and categories of index offences***

The figures illustrated in Table 3.8 illuminate the *levels of violence* and harm for *specific categories of offences* that are featured in this study. Key findings show that a majority (26/33) of the non-sexual violent offences against the person had involved the use of weapons to inflict very serious physical injury (Violence Scale I). This

particular group of offences constitutes the most serious crimes in terms of the physical injuries sustained by the victims. However, these form only a minority (18%) of the total sample of offences featured in this study. Other figures which distinguish those convicted of sexual offences (see Table 3.8, column 2) show that in 4 out of 13 cases, juveniles had also used a weapon (most typically a knife) to threaten their victims with further serious harm (Violence Scale II). These particular crimes had all involved the rape of unknown (stranger) female victims. In the remaining cases involving sexual offences (9/13), the offenders had known their victims in some way, either as acquaintances, school friends or younger relatives. None of these latter crimes had involved the use of weapons (Violence Scale III).

The combined figures for commercial robbery and street robbery show that almost half of these crimes (43%) had involved some use of violence and physical harm to victims. In 12% of these cases, the level of violence was in the highest category (Scale I) where juveniles had used weapons to inflict physical injury. More commonly, those convicted of robbery had used Scale III violence, injuring their victims without the use of a weapon. Most violent robberies tended to be street robberies where half (51%) of the victims (19/37) suffered a personal injury in comparison to 35% of victims in commercial robberies (13/37). There were, however, a small cluster of street robberies in which juveniles had ‘snatched’ bags and purses from their victims. In these particular cases, the physical injury to victims had resulted from them being pushed to the ground or falling to the ground, and where significant levels of harm (including physical injury) had been sustained.

Almost half of the burglary cases (6/14) had involved the use of violence to physically injure victims and all of these offenders had been convicted of aggravated burglary. The study also includes one isolated case in which a juvenile had been convicted of the possession of a Class A drug (heroin) with the intent to supply and an associated assault of another young person. This offence, therefore, is identified as incorporating elements of violence (Violence Scale III), although the physical injury to the victim was not serious. The cumulative findings illuminate the extent to which the use of violence (with and without a weapon) is featured across and within the different types of offences that have resulted in the use of longer periods of detention.



***Violence Scale IV-V threats of violence and serious harm***

In almost one-third of the offences (31%), juveniles had not used any violence to inflict physical injury, although they had threatened their victims and most typically weapons had been used to threaten serious harm (Violence Scale IV). These particular offence characteristics are overwhelmingly concentrated in the cases of robbery. In over half of the robberies that are featured in this study (51%), juveniles had not used any violence to physically injure their victims, but they had used threats of violence to cause intimidation and fear. Furthermore, in most of these cases (30/38) juveniles had used weapons to threaten serious harm (see Table 3.8 above). In correspondence with the earlier finding that a higher proportion of the street robberies had involved the use of violence to physically injure victims, here a larger proportion of the commercial robberies had involved the use of weapons to *threaten* serious harm. Cumulatively, over one-fifth of the respondents in this study (21%) had been convicted of either a street robbery or a commercial robbery in which weapons had been used to threaten, intimidate and frighten victims. The findings from the present study, therefore, not only illuminate certain characteristics of serious juvenile robbery, but they also reveal that in the combined cases of robbery, weapons were most typically used to *threaten* serious harm (40%) as opposed to *inflicting* physical injury (12%).

From the very small number of burglary offences (n=14), the study includes cases in which during the course of a burglary of a dwelling, the householder (the victim) was threatened and weapons were used to support these threats (Violence Scale IV). In relation to other categories of offences, the research includes two further cases in which objects had been used to threaten serious harm: the first involved setting fire to an outbuilding belonging to a school, while in the other, a juvenile had deliberately dropped a block of concrete from a bridge onto a motorway and into the path of on-coming traffic. In both of these cases, the offences had presented a high risk of causing serious and potentially life-threatening harm to others. For the purposes of this study, therefore, these offences have been categorized as level IV on the violence scale.

***Violence Scale VI no violence and no threats of harm***

In 8 per cent of the total sample of offences, respondents had not used any violence to physically injure victims or to threaten them with harm. These features were found to be present in 5 out of the 14 burglaries and just 5% of the robberies analyzed in this study. The offenders, in these cases all had histories of persistent repeat offending. Within the violence scale VI offences, three juveniles had been convicted of drugs offences, including the possession of a Class A drug (heroin) with intent to supply. This latter offence had been committed in an area where there was a high incidence of young people being recruited into selling drugs and, in effect, becoming young drug dealers for usually older criminals. Drug use among young people and a drug culture was prevalent in the area at that time. The judge in this particular case commented that:

This is a serious offence and you are a young man who will lose his liberty for a substantial period. The drug trade ends for many in degradation and death. I accept others were involved who were older and more sophisticated.

Young male (convicted at the age of 15) and sentenced to 18 months detention

From the two other cases involving drugs offences, one juvenile had been convicted of three offences of selling Class A drugs to children outside a local secondary school. In these drugs cases, sentencing may have reflected the courts' concerns with two key issues: firstly the prevalence in certain areas of young people selling and dealing drugs predominantly to other young people and children; and secondly, the seriously harmful effects of drug use for individual young people, their families and the broader community. From an analysis of the offences in this study that are located specifically, at the *lower* end of the serious offences spectrum (Violence Scale VI), the findings provide some evidence to support the assertion that other factors including; a history of persistent offending and/or repeat crimes, and/or the prevalence of particular types of juvenile crimes at a certain time and place, may have played an influential role in both the assessment of offence-seriousness and the use of longer periods of detention for certain juvenile offenders. Moreover, the concepts of persistence (repeat offending), prevalence *and* offence-severity are all constituent parts of a complex sentencing process (see chapter 5).

### The use of weapons

Other findings from this research show the extent to which the juveniles in this study had been in possession of a weapon during the commission of their crime, and had used a weapon either to inflict physical injury or to threaten violence and harm. The findings, while reflecting the trend amongst certain groups of young people to carry weapons, also illuminate the potential risks that this creates for offenders and victims. The research includes a more detailed examination of the prevalence of weapons, combined with the types of weapons that were used. For the purposes of this study, what constitutes a weapon is interpreted broadly and incorporates clearly identifiable weapons such as firearms and knives, as well as a broad range of other implements or objects that were used during the commission of the offence. The analysis examines the use of weapons that were carried prior to and during the crime, for which there was an element of premeditation, and other implements/objects, such as glass bottles, pieces of concrete or bricks, that were acquired during the course of the crime and for which there appears to have been no premeditation (see Table 3.9).

**Table 3.9      Types of weapons and use**

Type of weapon	No of weapons/ and no of offenders	Weapon used to threaten violence	Weapon used to inflict physical injury	Weapon not used and remained concealed
Firearm (real)	13	9	2*	2
Firearm (imitation)	9	9	0	0
Axe/Hammer/Machete	9	4	5	0
Knife (all types)	36	20	16	0
Baseball bat/ wood	6	2	3	1
Glass Bottle	4	0	4	0
Concrete/brick/breezeblock	5	1	4	0
Screwdriver/scissors/saw	3	2	1	0
Other weapons **	5	3	2	0
<b>Total number of weapons</b>	<b>90</b>	<b>50</b>	<b>37</b>	<b>3</b>
<b>Total number of juveniles</b>	<b>85***</b>	<b>47</b>	<b>37</b>	<b>1****</b>

\* Firearms not used to shoot victims but were used to inflict other physical injuries. \*\* Other weapons include a CSF gas canister (1), a piece of drainpipe (1), a metal bar (1), a pellet gun (1), a Rottweiler dog (1). \*\*\* This figure includes 80 juveniles who each had one weapon and 5 juveniles who had 2

weapons each. \*\*\*\* Only 1 juvenile had a weapon that remained concealed during the commission of the offence. 2 other juveniles did have a concealed weapon each, but they also had one other weapon each that was used to threaten harm.

From a total of 90 weapons that are featured in this study, 85 juveniles (60% of the total sample) had been in possession of, and had used a weapon during the commission of the offence. The figures include juveniles who had either been in possession of a weapon prior to the commission of the offence, or had acquired an implement during the crime which had been used as a weapon. Although most of the juveniles had carried only one weapon each, 5 offenders disclosed that they had each been in possession of two different types of weapon prior to and during the commission of their offence. In just over half of the cases (55%) weapons had been used to threaten violence and serious harm, while a slightly lower proportion (44%) had been used to inflict physical injury.

The weapons most commonly used were knives: 1 in 4 juveniles had used a knife during the offence and amongst the sub-sample of 84 who had used weapons, 36 (43%) had been armed with a knife, with 20 using it to threaten harm, and a further 16 to inflict physical injury<sup>24</sup>. Two-fifths of the non-sexual violent offences against the person (13/33) had involved the use of knives, but knives had also been used to threaten serious harm in a range of different offences including the rape of an adult female (3 cases), street robbery (10 cases), commercial robbery (6 cases) and aggravated burglary (1 case). Most notably just under one-quarter (23%) of the sexual offences (rape) and just over one-quarter of the street robberies (27%) had involved the use of knives to frighten victims and threaten further harms. In comparison, the use of a knife in commercial robbery was found to be less prevalent (16%). The findings from this part of the research, therefore, illuminate the extent to which the possession and use of knives is featured across a spectrum of violent and other serious juvenile crimes.

### ***Juvenile robbery and firearms***

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<sup>24</sup> The offences that had involved the use of a knife to inflict physical injury were attempted murder (2 cases), wounding with intent to cause grievous bodily harm (11 cases) and street robbery (3 cases).

A total of 22 juveniles had been in possession of a firearm (real or imitation) prior to and during the commission of the offence. This figure represents 15% of the total sample and one-quarter of those who had been in possession of a weapon. The number of juveniles in possession of a real firearm (13) was found to be higher than the number carrying imitation firearms (9). However, the extent to which real firearms were loaded with live ammunition could not be reliably determined from the data and, in addition, none of the juveniles in this study had discharged a firearm during their offence. In most cases (18/22) firearms had been used to seriously frighten and threaten victims. Two respondents in separate cases had used firearms as objects to physically injure their victims but neither of these victims had been shot. In two other cases juveniles had been in possession of firearms but these weapons had remained concealed.

The use of a firearm to threaten serious harm was concentrated in the offences of commercial robbery. More than half of the juveniles (12/22) armed with a firearm, had used it to threaten violence during the course of a robbery of commercial premises which included, banks and building societies, petrol stations, off-licenses and local shops. In 6 cases juveniles had used a real firearm, and in 6 other cases imitation firearms had been used. In relation to other categories of offences, 4 juveniles had each used a real or imitation firearm to threaten violence during offences of street robbery, and 1 juvenile had used a firearm to threaten violence during an aggravated burglary of a dwelling. These findings indicate that the use of a firearm was linked primarily to serious acquisitive crimes for monetary gain as opposed to the commission of violent offences against the person. Clearly the use of firearms demonstrates access to criminal contacts and an extreme level of risk-taking in terms of the potential outcomes for victims and offenders. It is therefore unsurprising that the juveniles in possession of firearms tended to be either enmeshed in, or on the fringes of a street gang culture. In particular, of those in possession of a real firearm, just under half (6/13) came from the same local community, which at that time, was synonymously associated with a gangs, drugs and gun culture. Firearms and ammunition were available in the area, and certain respondents had revealed that they had acquired a real firearm from older gang members.

### ***Other weapons***

Altogether 58 juveniles (41% of the total sample) had been in possession of and had used either a knife (26%) or a firearm (15%) during the commission of their offence. In all of the offences involving firearms, and in a majority of the offences involving knives, the weapons were carried prior to the commission of the offence and suggest a degree of premeditation. But in addition to these cases, just under one-quarter (23%) of the offences in this study had involved the use of other implements/objects to inflict physical injury and threaten serious harm. As mentioned earlier, the weapons were capable of causing serious harm and included an axe, hammer, machete, other sharp instruments, baseball bats, bricks or pieces of concrete and broken glass bottles (see Table 3.9). In a majority of these cases (59%) the implements had been used in crimes involving serious violence against a person(s). However, there appeared to be considerably less premeditation in the use of these objects and a greater degree of impulsivity as over half of them (56%) had been obtained at the scene of the crime. Nonetheless in a smaller proportion of cases (12/32), the implements had been used to *threaten* violence during the course of either a commercial robbery or a street robbery. In all but one of these cases the implements used as weapons had been carried prior to the commission of the offence suggesting a willingness to use violence with respect to the carrying of weapons, irrespective of whether the crime itself was planned or an impulsive act.

### **Criminal harm: the impact on victims**

The index offences and the violence scales (I-VI) provide an indication of the gradations of criminal harm caused or risked to victims. Data obtained from court and sentencing reports contained within individual inmate prison files, reveal a broader view of harm in relation to experiences of physical injury and the prevalence of other psychological harms. The levels of physical injury are divided into three broad categories identifying victims who had received physical injuries and distinguishing those for whom the injuries had been life-threatening or very serious, and two categories of ‘other physical injury’ distinguishing sexual offences from other offences that had resulted in physical harm (see Table 3.10).

**Table 3.10 Broad categories of physical injury**

Category of Injury	Numbers and % of sample
Life threatening or very serious physical injury	26 (19%)
Other physical injury (sexual offences)	13 (9%)
*Other physical injury (non-sexual offences)	46 (33%)
No physical injury	55 (39%)
<b><i>Total</i></b>	<b><i>140 (100%)</i></b>

\* Offences include GBH (7); commercial robbery (13); street robbery (19); aggravated burglary (6); other offences (1).

Overall 6 out of 10 offences had resulted in varying levels of physical harm to victims. At the most severe end of the spectrum, which comprised almost 1 in 5 offences (19%), victims had sustained either life-threatening or very serious physical injuries. In all of these cases, offenders had used weapons to inflict serious physical harms (Violence Scale I). With specific reference to these particular offences, victims' statements supported by other officially recorded information reveal the extent to which a seriously violent crime had impacted upon the lives of individual victims. Most specifically, the records highlighted the experiences of prolonged periods of hospitalization and medical treatment, intermittent and persistent physical pain, facial and other scars or disfigurements (see also Genders and Morrison, 1996: 44-45). The most serious cases had resulted in long-term consequences for victims, including impairments to physical and mental health, employment or finding work, family life and other social/community relationships. From such experiences, a significant deterioration in well-being, standards of living and quality of life can be inferred. In addition, for the victims of serious sexual offences (n=13), the experience of multiple harms, both physical and psychological, can be particularly severe and enduring.

A further 33% of the victims had experienced some degree of physical injury (with and without weapons) as a result of other violent crimes including robbery and aggravated burglary (Violence Scale I-III). For these victims, the level of physical injury was less than that experienced by the groups discussed above. However, they were considered by the courts to have also experienced psychological harms, judged to be severe. In a further two-fifths (39%) of the offences that are featured in this

study, victims had not been *physically* injured, but in the majority of these cases (34/55) weapons had been used to *threaten* serious violence and harm (Violence Scale IV). In the absence of physical injury, therefore, the levels of psychological harm to victims – as a discrete measure – had been deemed by the courts to be of such severity as to necessitate the use of long periods of detention.

In the next tier of offences victims had either been threatened verbally without the use of weapons or no direct threats of physical harm had been issued (Violence Scale V-VI). This particular sub-group of offences, which constitute 15% of the total sample, might reasonably be located at the less severe end of the grave-crimes spectrum. The cumulative research findings have illuminated the variants of criminal harm (physical and/or psychological) with respect to a sample of offences that have resulted in the use of juvenile long-term detention. Moreover, in addition to the incidence of physical injury, the findings may also illuminate the considerations of the courts, in relation to the psychological consequences of serious juvenile crimes for victims.

### **The characteristics of victims: age, gender and vulnerability**

From the statutory provisions contained within the Criminal Justice Act 2003, contemporary sentencing guidelines have re-asserted that the nature of criminal harm is intrinsically bound by the personal characteristics and circumstances of the victim (Sentencing Guidelines Council, 2005: item 1.10, page 4). In an attempt, therefore, to provide a broader view of the harms contained within this sample of serious juvenile crimes, the research includes a profile of each victim based (primarily) upon age and gender. The construction of a typology of victims facilitates a deeper understanding of the offences committed by the juveniles in this study and also illuminates the issues of offender culpability and offence seriousness. A critical element central to the analysis of victim characteristics focuses on the concept of ‘victim vulnerability’ in cases where juvenile offenders have been sentenced to longer periods of detention. It is established that the targeting of vulnerable victims is an important aggravating factor in the assessment of offence seriousness and the sentencing of offenders. From an analysis of the principal direct victims in 115 offences featured in this study, the research not only reveals a view of victim vulnerability, but it also shows that young males are more likely to be victims of violent youth street crime (see Table 3.11).



**Table 3.11 Victim characteristics and categories of index offences**

Victim Characteristics		Victim Characteristics and Index Offences					
Gender and Age-groups		Violence Wounding GBH	Sexual Violence	Robbery Premises	Street Robbery	Aggravated Burglary/Burglary	Other Offences
With Total Figures							
Male	<b>67 (58%)</b>	<b>24 (36%)</b>	2 (3%)	6 (9%)	<b>25 (37%)</b>	7 (10%)	3 (4%)
Female	<b>48 (42%)</b>	5 (10%)	<b>11 (23%)</b>	<b>18 (37%)</b>	7 (14%)	5 (10%)	2 (4%)
<b>*Total</b>	<b>115 (100%)</b>	<b>29</b>	<b>13</b>	<b>24</b>	<b>32</b>	<b>12</b>	<b>5</b>
<b>Males and age-group</b>							
Children under 14 ( <b>4</b> )		2	2	-	-	-	-
Adolescents 14-18 (approx) ( <b>28</b> )		11	-	1	12	1	3
Adults over 18 ( <b>28</b> )		11	-	4	10	3	-
Elderly persons aged 70+ ( <b>7</b> )		-	-	1	3	3	-
<b>Females and age-group</b>							
Children under 14 ( <b>7</b> )		1	6	-	-	-	-
Adolescents 14-18 (approx) ( <b>4</b> )		1	2	-	-	-	1
Adults over 18 ( <b>23</b> )		3	3	14	2	-	1
Elderly persons aged 70+ ( <b>14</b> )		-	-	4	5	5	-

\* The percentage calculations are based on 115 cases. Victim data was not available in 27/142 cases.

\*\*Column 1 provides the total figures for the numbers of male and female victims together with the raw figures for each age category. Column 2 brings together the characteristics of victims for each of the principal index offence categories.

While an overwhelming majority of the index offences (96%) had been committed by male juvenile offenders, just over two-fifths of the victims were female. The figures also reveal that almost 4 in 10 victims were children and other teenagers (up to the age of 18). This latter finding reveals the prevalence of young people as victims of violent and serious youth street crime. In relation to other age groups, the largest proportion of victims, constituting 44% of the total sample, were adults aged between 18 and 60, while 18% of the victims were described, in official reports, as being in

their 70s or 80s. Cumulatively the figures show that while the single largest proportion of victims are identified as adults over the age of 18, over half of this sample of victims (56%) were either young (up to the age of 18) or elderly, although the number of young victims outweighs the number of elderly victims by a ratio of 2:1. This sample, therefore, comprises twice as many young victims (43) than elderly victims (21).

From a combined analysis of gender and the age profiles of victims, a large majority of the adolescent victims in this study (88%) were young males, representing one-quarter of the total sample of victims. Contrastingly, from an analysis of child victims (under the age of 14), and taking into account the very small numbers (n=11), a majority of these children (7/11) were female. Altogether, 15% of the female victims and 6% of the male victims were children. In relation to the very young victims (under 14) that are featured in this study, it is perhaps relevant to add at this stage that all (except 3) had been the victims of serious juvenile sexual offences. The cumulative figures show that almost half of the male victims (48%) and almost one-quarter (23%) of the females were children and young people (up to the age of 18).

At the other end of the age range spectrum, 12% of the victims in this study were elderly females and 6% were elderly males. This sub-sample is comprised solely of victims in their 70s and 80s. The proportion of elderly female victims represents 29% of the female victims in this study. The figures illustrate both the incidence of elderly victims in a sample of serious juvenile crimes and the prevalence of elderly female victims (see Table 3.11). Cumulatively the figures reveal that while three-quarters (77%) of the female victims were adults, a sizeable proportion were of an older age. From an overview of the victims in this study, the findings not only illuminate a broad population, but they also isolate particular vulnerable groups including, and most specifically, the young and the elderly.

### ***Victim characteristics and serious juvenile crimes***

Other key findings from the empirical victim data reveal the prevalence of adult males and young males as victims of serious and violent street crime, especially violence against the person and robbery. In a majority of the (non-sexual) violent offences against the person (83%) the victims had been male, and over half of these male

victims (54%) were children and young people. Similarly, in a majority (78%) of the street robberies featured in this study the victims were male, and almost half (48%) were young people aged between 14 and 18. Cumulatively the findings from this research show that almost three-quarters of the male victims (73%) had been victims of either a serious violent offence against the person (36%) or a violent street robbery (37%). In addition, just over half (51%) of the male victims of juvenile violence and street robbery were other young people.

The incidence of females as victims of non-sexual juvenile violence was comparatively low, although the crimes that involved male juvenile violence against a female had been the most serious and violent offences against the person (attempted murder, serious wounding/GBH). These offences had typically been committed inside a dwelling or other premises, as opposed to outside on the streets or in a public space, more commonly associated with male on male violence. Females did feature significantly as victims of serious juvenile sexual offences. A majority of the sexual offences (11/13) featured in this study had been committed against females: and almost one-quarter (23%) of the female victims had been the victim of a serious sexual offence. Furthermore just over half (6/11) of these female victims were younger children between 6 and 13 years of age. The combined figures show that 1 in 3 females had been the victim of either a sexual or non-sexual violent juvenile crime. These findings illuminate a separate and distinct population of victims in terms of age (extreme youthfulness) and gender, or by gender alone and the severity of the offences. Within this population, in particular, there are profoundly vulnerable victims, and amongst the most vulnerable of all, are the younger female and male child victims of serious juvenile sexual offences.

Other findings from this research show that female victims had featured significantly in offences involving either an armed or unarmed robbery of commercial premises. From a sample of 24 commercial robberies (in which victim data were available), three-quarters of these offences involved female victims who were employees/members of staff. Most typically, the robberies had been committed on premises such as petrol stations/garages, off licenses, takeaways, newsagents or other shops including small local stores. Only in a small number of cases had the robberies taken place inside a bank or building society. For both the female and male victims of

these crimes, all (except one) were adults and one in five (21%) were elderly shopkeepers or employees.

With specific reference to street robbery, a minority of offences (22%) had involved female victims, although a majority of the female victims of street robbery were elderly retired persons in their 70s or 80s. Cumulatively, one-quarter of the street robberies had involved elderly female and male victims. In these particular cases, the circumstances surrounding the offences had typically involved a small group of juveniles approaching an elderly victim and snatching a shopping bag or handbag. In some cases, victims had been pushed to the ground and sustained physical injuries (including a broken arm, other arm and shoulder injuries or a pelvic injury). The two cases summarized below illuminate particular incidences of street robbery involving elderly victims:

Six young people were gathered together near the local shops. One young person approached an elderly female victim and with considerable force grabbed her handbag. The five others acted as 'look-outs'. The victim fell to the ground crying for help. The victim sustained arm and pelvic injuries requiring hospitalization.

Three young people saw an elderly lady who was returning home after collecting her pension money and buying some groceries. Two young people acted as 'look-outs' whilst the third young person approached the elderly lady. She was pushed to the ground and robbed of her shopping bag. The victim sustained facial and arm injuries.

These offences had resulted in very little financial gain for the offenders. In addition, a majority of the aggravated burglary and burglary cases (8/12) featured in this study had involved elderly victims who were typically living alone. Consequently, it seems that offences that might reasonably be located at the less severe end of the grave-crimes spectrum have attracted longer periods of detention due to the victimization of particularly vulnerable people, which 'aggravates' the seriousness of the offence.

Three-quarters of the respondents had indicated that the index offence(s) had been committed within or near to the local community in which they lived. However, in a majority (78%) of cases, the offenders and victims had either been complete strangers or strangers in the sense that victims were known only by sight. Only 1 in 5 respondents (22%) said that they had known their victim(s), either through old acquaintances, peer groups or other associations linked to their local community. In relation to particular offending, other findings reveal that over one-third (36%) of the

respondents convicted of a violent offence against the person, and almost half of those convicted of a sexual offence (46%), had known their victims and in some cases there had been a close relationship. The study includes three cases in which the offenders and victims were related. In one case of attempted murder, the circumstances were particularly tragic as the victim was the mother of the offender. This young person had revealed at the interview that his mother had been an alcoholic and that he had committed the crime in an attempt to '*put a stop to all her suffering*'. In two other cases involving serious sexual offences, the victims had been a younger sister and a younger female cousin. The perpetration of such offences within a family may contribute to more complex and long-term feelings of humiliation, guilt and remorse, although evidence from the interview data indicates that feelings of sadness, regret and remorse were prevalent across the whole sample.

### **Gradations of harm, victim vulnerability and judicial comments**

Key findings that have emerged from this part of the research further demonstrate the diversity and heterogeneity of offences that have resulted in the use of juvenile long-term detention. The incidence of juvenile violence, as would be expected, was a central feature in a majority of the offences, although the levels of violence and harm actually caused to victims were broadly gradated. As a result, this study has isolated a comparatively small sub-group of respondents (19% of the total sample), convicted of the most serious violent offences characterized by the use of weapons to inflict very serious physical injury. In almost 4 out of 10 offences, juveniles had not used violence to physically injure their victim, although in a large proportion of these offences there had been threats of violence and harm. In the absence of actual violence, almost 1 in 4 offences (24%) had involved the use of weapons to threaten serious harm. At the other end of the grave-crimes spectrum, the sample includes a small, but not insignificant, group of offences in which there was no violence and no threats of harm to victims. These findings mark the emergence of a more detailed picture of the offences that have resulted in the sentencing of juveniles to longer periods of detention.

In relation to the empirical victim data presented in this study, sentencing guidelines highlight the increasing significance of the characteristics and circumstances of victims within the context of contemporary sentencing policy. It is emphasized that:

The nature of harm will depend on personal characteristics and circumstances of the victim and the court's assessment of harm will be an effective and important way of taking into consideration the impact of a particular crime on the victim (Sentencing Guidelines Council, 2005, p4).

Culpability will be greater where an offender targets a vulnerable victim because of their old age or youth, disability or by virtue of the job they do (Sentencing Guidelines Council, 2005, p5).

From an examination of court and sentencing information contained within individual inmate prison files, the following comments from judges include direct references to victims in robbery cases and provide examples of where the characteristics of victims and victim vulnerability have been given prominence during the sentencing process.

Those who work in small shops must know that when defendants are caught for committing offences of this kind against them, they will be properly punished, and the victims will have the support of the courts and all right-thinking members of society.

Cashiers are vulnerable especially when there are few people about. You were dressed with a balaclava and pointed the weapon at the victim.

These were cowardly acts including a terrifying assault on two old men and a sub post mistress.

Offences such as these are prevalent in your area with elderly people being targeted by groups of youths and robbed.

It was 10 o'clock at night when you went into this small shop armed not with a replica but with a real firearm. You went together, not just one person but 2 went in to confront this female who was running the shop, and you demanded and got money from her. The monetary gain was fairly small, but the effect that you inevitably had on that lady was significant. Time and again the courts are dealing with offenders such as yourselves, and usually young offenders ... people who run corner shops have to be protected by the courts ... if the courts find themselves dealing with robbers like you two, will deal with them in such a way as not just to spell it out to you that you should never do it again, but to spell it out to others that they should not even think of it ... that is a message which courts have been trying to get over for years, and it seems are failing to get across.

Comments from judges obtained in verbatim from individual prison files

The comments from judges in these particular cases also demonstrate that the targeting of vulnerable victims was an important factor in assessments of offence seriousness and the use of long periods of detention.

However, the findings from this research also emphasize the prevalence of young males as victims of violent street crimes, including robbery and serious violence. This

is also supported by a number of respondents who indicated that they, themselves, had been the victims of (largely un-reported) street violence and/or robbery. Such findings reflect aspects of a youth-street culture in which young people are vulnerable both as victims of street violence and as perpetrators of serious and/or violent youth crimes. Within the context of serious juvenile criminality, the issues of offender youthfulness, immaturity and impulsivity may contribute to the targeting of other young and vulnerable people. In other words, the young are, perhaps, more likely to offend against others who are also young and/or vulnerable.

### **Offence-seriousness and offender culpability**

The next stage of the research exploring offence-seriousness considers issues relating to offender culpability. It incorporates an examination of selected variables that illuminate both the complex nature of juvenile criminal culpability and the construction of individual criminal roles. The four selected variables for analysis are: (i) the age at commission of the index offence, (ii) single and multiple offender crimes, (iii) the use of alcohol and/or drugs prior to the commission of the offence, and (iv) offence planning and impulsivity. The analysis additionally provides an insight into the circumstances and conditions leading up to the commission of violent and other serious juvenile crime.

#### ***(i) The age at commission of the index offence***

The respondents in the present study were all aged between 13 and 17 years (inclusive) at the commission of the index offence. A large majority (69%) were aged between 15 and 16 and almost half of the sample (46%) were school aged children under the age of 16 (see Table 3.12). Only a minority of the respondents (15%) had reached the maximum age of 17. With specific reference to the female respondents (n=5), four were aged between 15 and 16 at the time of the offence and one was aged 17.

**Table 3.12**      **Age at commission of the index offence**

<b>Age (years)</b>	<b>Numbers and Percentages</b>	
13	1	(1%)
14	21	(15%)
15	43	(30%)
16	55	(39%)
17	22	(15%)
<b>TOTAL</b>	<b>142</b>	<b>(100%)</b>

The percentage rates have been rounded to the nearest whole numbers

The findings confirm not only the youthfulness of the offenders but also allude to the underlying concepts of immaturity, vulnerability and associated levels of dependency. At the lowest end of the age-range spectrum, 16% of the respondents were very young (under the age of 15), while just over half (54%) had reached or were over the minimum school-leaving age (16 and 17) at the commission of the index offence. From the literature, it is established that the seriousness of delinquency tends to increase with age (Loeber et al., 1998: 23) and other studies have confirmed that for young male offenders, the peak age of offending is 16 for violent offences and 17 for other serious offences, whereas for young females, 15 is the peak age for serious offending and 16 for violent offending (Graham and Bowling, 1995: 27). These findings are reflected in the present study, although the proportion of younger males under the age of 16 at the time of the index offence (46%) appears to be higher than might be expected (see further comments in chapter 5).

***(ii) Single and multiple offender crimes***

A large majority of the offences were multiple-offender crimes. From the literature, it is established that where a child or adolescent commits a violent crime, the offence is likely to have been committed with at least one or more of their peers (Borduin and Schaeffer, 1998: 156; see also chapter 4). The present study shows that only 1 in 4 of the respondents had committed the index offence alone. Three-quarters of the sample (107/141) had committed the offence with other people most typically, friends and acquaintances or, in certain cases, older family members (see Table 3.13).



**Table 3.13** Number of offenders for each of the index offences

Number of offenders	Number of crimes and percentages
1	34 (24%)
2	34 (24%)
3	37 (26%)
4	20 (14%)
5-10	16 (11%)
Totals	141

Half of the offences analyzed in this study (71/141) had each involved either 2 or 3 offenders, while a further 1 in 4 offences had each involved at least 4 offenders. The latter finding includes 16 crimes (11% of the sample) that had been committed by large numbers of offenders. The prevalence of co-offending in adolescence illuminates other aspects of youth subculture including the formation of delinquent peer-groups and gang-membership. Findings from this research indicate that the 16 offences involving (in each case) between 5 and 10 offenders, were committed by young gang members and were clearly ‘gang-related’ crimes. In addition to these cases, a small number of other male respondents had admitted to being in a gang, although the index offence was not strictly identifiable as a ‘gang-related’ crime. Most typically, however, respondents had formed associations with delinquent peer-groups and committing crimes with delinquent peers was found to be particularly common (see chapter 4).

The prevalence of multiple-offender serious juvenile crimes brings into focus the issue of individual offender culpability within the context of hierarchical criminal roles. In cases where there are multiple offenders, criminal roles can be non-hierarchical with each offender playing an equal and similar role within the commission of a crime, or there can be marked variations in the criminal roles played by individual offenders. For example some young people in this study were identified, by the courts, as being ‘ring-leaders’ and principal offenders, while others were acknowledged as playing a secondary role. For some, a secondary role involved acting as a ‘look-out’ or simply being present during the commission of an offence by others. The following extract from a pre-sentence report reflects the significance of

differential roles in multiple-offender crimes. In this particular case, the respondent was convicted of two armed commercial robberies and sentenced to 4 years detention. He was attending school and in the process of completing his GCSE examinations at the time of the offences and he had no previous convictions.

Prior to the night of the robbery AB was not aware that any planning to do the robbery had been made. His role in the offence was of the person holding the door though on both occasions he was given a weapon which he held down by his side. AB fully acknowledged that although he felt unable to withdraw from his participation in these events, he was on both occasions extremely scared. He did acknowledge that perhaps one motivating factor was to create a 'big impression' on the older youths. While he was subject to group pressure he also greatly under-estimated the seriousness of this type of offending.

In addition, a small number of young people reported that they had been coerced into taking part in a serious offence with other, invariably older and/or more experienced offenders. From an analysis of offence characteristics, it could be argued that while individual criminal roles are given considerable weight by the courts, it is the cumulative seriousness of the offence (in totality) that is the principal determining factor triggering an offender's eligibility for longer terms of detention. While the length of a sentence may reflect the particular role a young person has played during the commission of an offence, the presence of multiple offenders operating in groups or gangs is an aggravating feature, which increases levels of harm and individual culpability (Sentencing Guidelines Council, 2005, item 1.22: p6). The involvement of multiple offenders in the commission of a crime is, therefore, likely to be a significant factor both in the determination of offence-seriousness and in the sentencing of juveniles to longer periods of detention.

In a majority of the cases (87/107) involving multiple offenders, more than one offender had been charged and convicted of the crime. As a result, respondents had mostly reported that co-defendants had also received lengthy custodial sentences. In the remaining 20 cases (19%) young people had not been willing to disclose the identities of their co-offenders to the police and were prepared to accept sole responsibility for the crime. In a number of cases, respondents described a culture in which information about co-offenders was not, under any circumstances, disclosed to the police. Some mentioned a fear of revealing information about others because there was a real threat of intimidation and/or violence if they did so. This was particularly

apparent in cases where others involved in the crime were older or were dominant members of a criminal community. Other findings from the empirical data show that most of the respondents had been arrested and charged shortly after or ‘within days’ following the commission of the index offence.

***(iii) Alcohol-related and drug-related serious juvenile crimes***

A small majority of the young people in this study had been drinking alcohol and/or taking illegal drugs prior to the commission of the index offence. Correspondingly, just over half of the respondents (76/142) reported that they were still under the influence of alcohol and/or drugs at the time of the offence (see Table 3.14).

**Table 3.14 The use of alcohol and drugs prior to the index offence**

<b>The use of Alcohol and Drugs prior to the commission of the index offence</b>	<b>Number of respondents and % rates</b>
<b>Alcohol</b>	<b>26 (18%)</b>
<b>Drugs</b>	<b>25 (18%)</b>
<b>Alcohol and drugs</b>	<b>25 (18%)</b>
<b><i>Sub-Total</i></b>	<b><i>76 (54%)</i></b>
<b>No alcohol or drugs</b>	<b>66 (46%)</b>
<b><i>Grand Total</i></b>	<b><i>142 (100%)</i></b>

The percentage rates are based on 142 cases and are rounded to the nearest whole numbers

The proportion of those drinking alcohol only (18%) was equal to the proportion of the respondents solely misusing drugs (18%), and the same proportion reported both drinking alcohol *and* misusing drugs prior to their offence. A majority of the respondents did have a history of substance misuse (see full account in chapter 4) which is one of a myriad of factors that may predispose young people to the risk of serious and violent offending behaviour (Lösel and Bender, 2006: 47). It is further observed that ‘antisocial behaviour goes along with substance abuse [and] this, in turn, increases the risk of committing serious offences [while] under the influence of drugs or alcohol’ (ibid: 2006: 54). This finding accurately reflects the experiences of a majority of the respondents in the present study.

In keeping with the findings of other studies of juvenile offending (see Hawkins et al., 1998: 142; Bromley and Nelson, 2002), juvenile violence was found to constitute the largest proportion of alcohol-related offences. Half (50%) of the respondents convicted of a violent offence against the person had been drinking alcohol prior to the commission of the crime and were under the influence of alcohol at the time of the offence, compared to less than one-third (30%) of those convicted of either robbery or burglary (see Table 3.15).

**Table 3.15 Offence categories and the misuse of alcohol and drugs**

Index offence category	Related alcohol misuse (no of respondents)	Related illicit drug use (no of respondents)
Violence against the Person (n=46)	23 (50%)	14 (30%)
Robbery and Burglary (n=90)	27 (30%)	36 (40%)

NB: The total figures (50) comprise the respondents who had either solely or mainly misused alcohol with those who had either solely or mainly misused illicit drugs.

Other complementary findings from this research also show that a sizeable proportion of the respondents convicted of robbery and burglary had used illicit drugs before committing the offence, and/or the offence was linked to illegal drugs in some other way. Of the 90 young people convicted of robbery or burglary in this study, 36 (40%) had misused drugs prior to the commission of the offence, in comparison to 14 (30%) of those convicted of a violent offence against the person. It would seem that within this analysis of serious juvenile crime, there is a particular relationship between juvenile drug misuse and offences involving robbery or burglary. This conclusion is further supported by the numbers of respondents who self-reported that their offences (most commonly involving a robbery) had been committed in order to fund a drug habit/addiction or to obtain money to repay accumulating debts to their drug dealers. The following comments by one respondent provide an insight into such experiences:

It were on my street, a taxi come and there were a taxi driver. It were a robbery, I needed the money to pay for my drugs and that, that's all. I just thought that's it, I needed some money. I stopped the taxi and told him to take me to the high street, and then I pulled a gun on him and demanded money and that. But he didn't have any [money] so that were it. I just got out [of the taxi] and run. I were really bad on heroin and I were sorry for what I'd done.

Young male convicted of attempted robbery x2 and sentenced to 6 years detention

For another respondent it was recorded in his pre-sentence report that:

At the time of the offence, [he] was misusing drugs and for which he had borrowed money and had become indebted to the dealers.

Young male convicted of aggravated burglary and sentenced to 4 years detention

From the empirical data, it was found that certain young people in this study had experienced serious threats, intimidation and violence from drug dealers and/or other associates as a result of outstanding drug debts.

It could be argued that any distinction between alcohol-related and drug-related juvenile crime is arbitrary and tenuous and, as this study has shown, both alcohol and drug misuse are featured across a spectrum of violent and other serious offences. Other findings from the present study, however, appear to indicate that the persistent relationship between alcohol use and violent offending is mirrored by a link between serious drug misuse and the commission of multiple robbery and/or burglary with potentially increasing severity (see further comments in chapter 4).

#### *(iv) Offence planning and impulsivity*

A majority of the offences analyzed in this study did not appear to involve any elements of planning and were, therefore, most typically identifiable as ‘impulsive’ crimes. From interview data and other documentary evidence, three-fifths of the offences (84/138) were reportedly unplanned, while the remaining offences (39%) had involved some degree of planning prior to commission. These findings, while reflecting the prevalence of offender-offence impulsivity, are also attributable to the combined experiences of youthfulness, immaturity and serious risk-taking behaviour. The criminological literature has established that within an accumulation of multiple bio-psychosocial risk factors, impulsivity and risk-taking behaviour in childhood and adolescence are both linked to violent and serious juvenile offending (Farrington, 1989, 1998, 2002; Maguin et al., 1995; see also Lösel and Bender, 2006: 44-47). Most typically, young offenders in this study described the index offence(s) as occurring on the ‘*spur of the moment*’, and with no apparent forethought concerning the offence, its seriousness or consequences. These features demonstrate, in particular, the impulsive,

random and opportunistic nature of much serious juvenile crime and encapsulate particular strands of youthful immaturity and vulnerability. In summary, features found to be present in the backgrounds of serious juvenile offenders, including (serious) substance misuse, delinquent friends and peer pressure, and associations with older and/or more experienced offenders, may further contribute to the prevalence of offender vulnerability, offence-offender impulsivity and serious risk-taking behaviour (see chapter 4).

The following comment illustrates the circumstances leading up to the commission of a violent juvenile crime, aspects of impulsivity and an outcome resulting in very serious consequences for both the victim and the offender:

We were down at the pub just having a little drink and that ...we started to head off and some guys were giving us trouble and that ...they were throwing glasses and that. There were only four of us like and we were all about my age 16 at the time. We went outside the pub and we all started fighting and that. I felt someone head-but me in the side of my head, and I just pulled out my blade and started stabbing him ...it was like a drunk and disorderly thing... I was legless virtually. It wasn't something I'd thought about doing ...it's the circumstances you find yourself in ...you've got to remember that these were twenty-five year old men and we were like little kids.

Young male convicted of attempted murder and sentenced to 7 years detention

Other remarks obtained from this young respondent's pre-sentence report reveal the lack of forethought with regards to the potential seriousness of the crime and the harm caused to the victim.

It is worrying that (he) shows no concern for the victim, because the victim hit him first he felt justified in retaliating and appeared not to have considered the difference between the actions of the victim and his subsequent action of stabbing the victim several times.

Comments obtained in verbatim from the pre-sentence report

Issues of youthfulness, serious risk-taking and impulsivity are likely to compound the ability to foresee the consequences of the crime. Additionally, in some of the cases analyzed the potential seriousness of an offence, prior to and/or during commission, was either completely disregarded, not foreseen or miscalculated. This finding, while particularly applicable to the serious crimes that were unplanned and impulsive, was also found to be applicable to the crimes that had involved some elements of planning.

Where a serious offence was planned, the scale and degree of offence planning was mostly haphazard and unsophisticated. For the majority of these cases, planning occurred with other offenders shortly before the commission of the offence and the main constituent of planning centred on the calculation of potential material gain. There appeared to be little consideration given to the seriousness of the offence, including the harmful consequences of the crime for the victim(s) and the potential punishment of the offenders in the event of being prosecuted and convicted. These findings appear to support the assertion that general and individual deterrence is unlikely to work because offenders neither consider the consequences of their actions nor do they believe that they will be caught (see chapter 5). It should, however, be noted that while any thoughts about the consequences of a serious crime are largely obscured before and during commission, this research has also found that thoughts about the offence including the harm and distress caused to victims, were manifested at varying stages during a long period of detention.

### ***Offence planning and categories of violent and serious juvenile crimes***

In consideration of particular categories of serious juvenile crimes, findings from the present study show that most of the offences involving non-sexual violence against the person were unplanned and impulsive street crimes. Under such conditions, the infliction of deliberate serious harm was not a planned action reflecting forethought, although the young people concerned were prepared to use violence impulsively, including extreme violence, without consideration of the consequences that such actions would be likely to incur. In relation to other violent street crimes, a majority of the street robberies were unplanned, random and opportunistic. In comparison, however, more of the commercial robberies and burglary offences had involved some elements of planning (see Table 3.16).

**Table 3.16 Categories of offences and offence planning**

Principal Index Offence	Offence Planning		Totals
	Yes	No	
Attempted Murder	0	2 (100%)	2
Wounding with Intent/ GBH	4 (14%)	24 (86%)	28
Sexual Offences	6 (46%)	7 (54%)	13
Commercial Robbery	22 (58%)	16 (42%)	38
Street Robbery	11 (30%)	26 (70%)	37
Aggravated Burglary/ Burglary	7 (50%)	7 (50%)	14
* Other Offences	4 (67%)	2 (33%)	6
<b>** Totals</b>	<b>54 (39%)</b>	<b>84 (61%)</b>	<b>138</b>

\*Other offences include Criminal damage 2 cases unplanned; Drugs offences 4 cases with some degree of planning. \*\* The total percentage figures are based on 138 cases. Data for 4 other cases is missing.

Almost 9 in 10 offences involving non-sexual serious violence against the person (including 2 cases of attempted murder) were unplanned crimes. In contrast, almost half of the offences involving serious sexual violence (6/13) had been planned in some way. This finding may provide a distinction in the levels of crime premeditation with regards to serious sexual offences and non-sexual violent crimes committed by children and young people. In relation to the commission of serious acquisitive juvenile crimes, almost three-quarters of the street robberies were unplanned and impulsive, compared to two-fifths of the offences involving the robbery of commercial premises. These figures show that a larger proportion of the commercial robberies (58%) had involved elements of premeditation including the carrying of weapons to aid the commission of the crime. Similarly, although the numbers are small (n=14), half of the offences involving aggravated and non- aggravated burglary had incorporated some degree of planning. Interestingly, the rates of offence planning show no correlation with the numbers of offenders involved in a particular crime:

**Table 3.17 Numbers of offenders involved in each crime and crime planning**

<i>Number of offenders</i>	<i>Crimes Planned</i>	<i>Not planned</i>
One single offender (34)	12 (35%)	22 (65%)
*2-3 offenders (68)	28 (41%)	40 (59%)
4 or more offenders (36)	14 (39%)	22 (61%)
<b>Totals</b>	<b>54</b>	<b>84</b>



The percentage figures have been rounded to the nearest whole numbers

\*For these numbers of offenders, percentage calculations are based on 68 cases (data for 3 cases is missing).

There was only a small percentage increase in offence planning for multiple-offender serious juvenile crimes, compared to crimes involving one single offender. It is, therefore, concluded that a serious crime involving a number of juvenile/young offenders, is not necessarily an indicator of a premeditated and planned offence. In consequence, the courts should not assume there has been planning when they are considering group offences, but should seek evidence for this in each individual case.

### **Concluding comments**

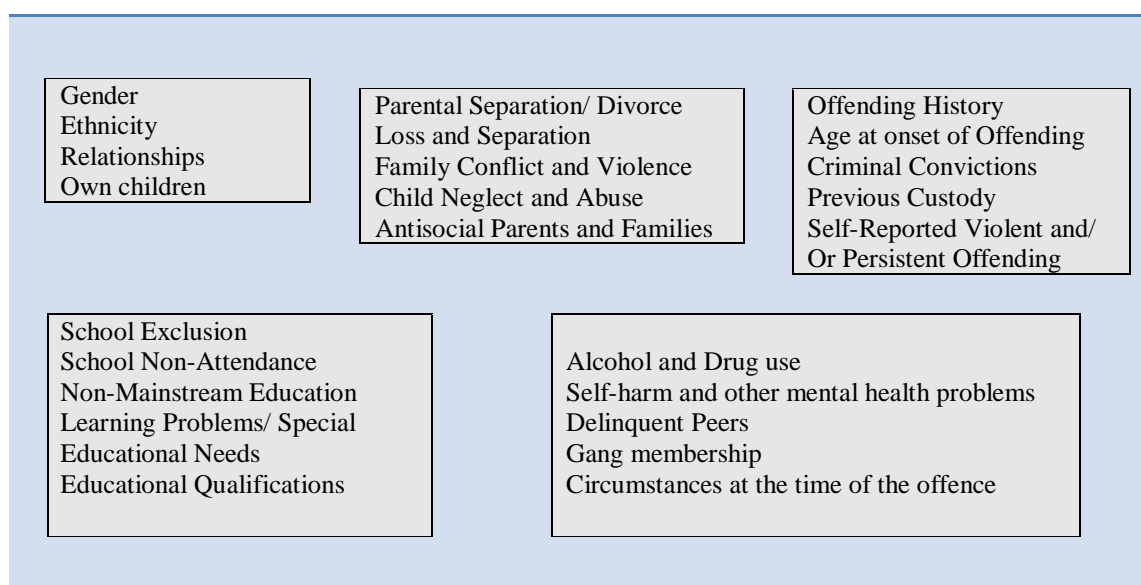
This chapter has explored the nature and circumstances of a range of offences defined by the law as ‘grave’ and necessitating the use of long periods of detention. Within the varied category of offences, gradations of offence-seriousness are illuminated by an analysis of violence and other harms together with a profile of the victims. In addition, key features relating to offender-culpability are brought into sharp focus. To this extent, the research facilitates a much broader view of violent and other serious juvenile criminality and its consequences for offenders and victims. Based on the cases that are featured in this study and taking into account the complexities underpinning sentencing (see chapter 5), there is no evidence to suggest that the sentence was being used inappropriately. However, within the present sample, some cases located at the less serious end of the grave crimes spectrum (burglary and drugs offences) could be identified as borderline. Any assertions that changes to the use of section 91 detention have resulted in more of these sentences being applied to less serious offences does not appear to be borne out by the present study.

## CHAPTER 4

### Offender Background Characteristics and Life Experiences

In an attempt to present an understanding of the offenders behind the crimes, this chapter examines individual and collective offender background characteristics together with other significant life events. The research brings together a comprehensive range of demographic, family and contextual variables in order to construct a detailed picture of childhood experiences (I), and adolescent social lives (II). In relation to childhood experiences, the study focuses on family life, schooling and educational attainment. The early onset of offending together with detailed offending histories are described and analyzed. The research also examines other aspects of adolescent social lives including the use of alcohol and drugs, delinquent peers and gang membership. Cumulatively, the findings represent a rich and detailed tapestry depicting individual young lives and the pathways to serious, persistent and/or violent juvenile offending. Interwoven experiences and effects of complex family and social lives are strongly illuminated. The empirical findings are also evaluated within the broader context of contemporary criminological research and multi-disciplinary child and adolescent studies. The key variables selected for analysis are further illustrated in Diagram 4.1.

**Diagram 4.1      An analytical framework**



The variables selected for analysis correspond with certain key features found to be prevalent in the backgrounds of serious young offenders. From extensive studies conducted by David Farrington (alone and with others), it is established that the major risk factors for juvenile offending are impulsivity and hyperactivity, low IQ and poor school performance, harsh or erratic parental discipline, physical abuse, parental conflict and separation, delinquent peers, socio-economic deprivation and community influences (West and Farrington, 1973; Farrington, 1992; 1997; 2000; 2002; 2003; 2005; see also Piquero, Farrington and Blumstein, 2007). These factors are inter-related so that young offenders most commonly experience multiple risk factors in childhood and adolescence. From other literature and research there is also strong evidence that children and young people who commit violent and other very serious offences are highly likely to have experienced severe and multiple forms of family dysfunction, deprivation and social exclusion (Kolvin et al., 1988; Millham et al., 1988; Bullock et al., 1990; Boswell, 1991, 1995, 1996, Puri et al., 1996; Bailey, 1996; 2000; see also Lösel and Bender, 2006: 45-47). It is observed that ‘adolescents with early, serious and persistent antisocial behaviour typically reveal multiple bio-psychosocial risks that have been accumulating since childhood’ (Lösel and Bender, 2006: 44). It is also recognized that the shape of offending behaviour in individual development is significantly influenced by the social environment and nature-nurture interactions (ibid: 47, 48). Importantly, ‘the risk of antisocial behaviour is shaped by a biological vulnerability emanating from inherited genetic characteristics and predispositions, in association with a range of inter-related familial, social and environmental risk factors’ (ibid: 48-49, 51).

From these findings, the present study incorporates a re-examination of the factors which contribute to violent and other serious juvenile offending. The research firstly examines issues of gender and ethnicity before going on to analyze a selection of key family variables and other significant life experiences. What follows is an emerging picture that illustrates complex individual and family histories, often deeply unhappy childhood experiences and chaotic or troubled social lives in adolescence.

## Gender and Ethnicity

The overwhelming majority of the respondents in this study (96%) were young males, with females constituting only 4% of the sample (n=5). The proportion of male to female offenders represents a ratio of 28:1. These figures correspond with official criminal statistics produced during the 1990s and up to 2004, which showed that around 95% of juveniles sentenced to longer terms of detention were young males (Boswell, 1997: 31; Criminal Statistics for England and Wales, 1997-2004). While the percentage of female offenders in this population has been consistently low, the figures appear to be rising. The research literature has broadly established that serious juvenile violence and other serious offending is significantly concentrated in samples of young males (Graham and Bowling, 1995; Newburn, 1997: 631; Borduin and Schaeffer, 1998: 147-148; Pople and Smith, 2010: 73). Other recent crime trends, however, have revealed a rise in the number of young females convicted of serious and violent crimes (Smith, 2010: 382). This finding correlates with an increase in the general use of custody for young female offenders (Graham, 2010: 129). In addition, although the actual numbers remain very small, more girls are receiving longer sentences. Annual figures since 2005 show that young females represent up to 8% of those sentenced to longer periods of detention (Criminal Statistics, 2005, 2006).

With regard to ethnicity, over half of the male respondents (55%) and all of the females (n=5) identified themselves as being white and from the United Kingdom, whilst 45% of the young males (n=61) were from black and other minority ethnic backgrounds<sup>25</sup>. The highly disproportionate number of young males from black and other minority ethnic backgrounds is striking and necessitates further explanation. The research fieldwork pertaining to the young male offenders in this study was conducted at four young offender institutions (YOIs) located in the North of England (Moorland), the Midlands (Swinfen Hall), the South East (Feltham) and the South West (Portland). Most of the respondents were from the large urban areas that were geographically located within the catchment area for each of the four establishments. At one YOI (Portland) the young male detainees were drawn from a very wide geographical area that included urban, rural and semi-rural locations. At the time of

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<sup>25</sup> Data relating to ethnicity was obtained through the use of open questions within the research interviews and is based on the self ascription of the respondents.

the research fieldwork, this particular establishment also accommodated young offenders from various parts of Wales. The proportions of young male respondents from black and other minority ethnic backgrounds varied considerably across institutions, ranging from 25% at Portland, 41% at Moorland, 44% at Swinfen Hall, and 68% at Feltham.

One-quarter (23%) of the total number of young males (32/137) defined themselves as being of black African-Caribbean heritage. This group of young black males constitutes the largest proportion (52%) of respondents from minority ethnic backgrounds. In addition, 7 young males strongly identified themselves as being black British and 2 others were from a black African background. Cumulatively these figures indicate that almost one-third (30%) of the total male sample, and 67% of those from minority ethnic backgrounds (41/61) were young black males. The second single largest group, were young males from mixed-parentage backgrounds. This group constitutes 8% of the male offenders in this study, and 18% of those from minority ethnic backgrounds. The combined figures show that 38% of the young males in this study (n=52) were from either a black/black British or a mixed-parentage background. In addition almost 4% of the sample had defined themselves as being of an Asian background (including Pakistani, Bangladeshi, British Asian) and a further 3% identified their ethnic origins as either Moroccan, Columbian, South American, or from the Philippines. These data illuminate the extent to which different minority ethnic groups are represented in a sample of young male offenders sentenced to longer-terms of detention and, in particular, the significant over-representation of young males from a black minority ethnic background.

These findings are consistent with other studies which have identified the disproportionate use of juvenile long-term detention for offenders from minority ethnic backgrounds and, in particular, young black males (Bullock et. al., 1990; Boswell, 1991, 1995, 1996; Ditchfield and Catan, 1992; Bailey et. al., 1994; Feilzer and Hood, 2004). The figures from Boswell's study (1996) showed that between 1991 and 1994, the proportion of ethnic minorities in the population of juveniles sentenced to long periods of detention increased from 16% to almost 25% and rose to 28% for those in the 15-20 year old age-group (Boswell, 1996: 30-31). Similarly, data obtained from the Youth Justice Board pertaining to a population of s. 91 offenders in custody

on 07/06/2006, indicate that from a total of 436 offenders, 32% were from minority ethnic backgrounds and that a significant majority of these (67%) was from a black/black British background. The same data set also reveals a similar pattern for female s.91 offenders, 36% of whom were from ethnic minorities and most of these young people were from a black African-Caribbean background (unpublished figures obtained from the Youth Justice Board, June 2006). A comparative analysis of previous research and contemporary official data (2006), therefore, appears to show a disproportionate increase in the use of s.91 detention for juveniles from minority ethnic backgrounds and, in particular, young black males.

The research findings raise important issues concerning (a) juveniles from minority ethnic backgrounds located at the serious end of the offending spectrum and (b) their treatment within the criminal justice system. It is generally recognized that young people from ethnic minorities are over-represented in the criminal justice and penal systems (see Bowling and Phillips, 2002). Cumulative figures show that from the general population of sentenced prisoners (young and adult); one in four is from an ethnic minority group (Prison Reform Trust, 2009: 26). Similarly, in a study conducted by HM Inspectorate of Prisons, from a sample of 1,222 sentenced juveniles in custody, 23% of the males and 26% of the females were from black and other minority ethnic groups (Challen and Walton, 2004: 7, 21). The present study suggests that for juveniles sentenced to longer-terms of detention, the proportions of males and females from black and other minority ethnic backgrounds are higher than the rates indicated for the general population of juveniles in custody. Contemporary debate has attempted to explain these findings of over-representation from the perspective of *difference* in terms of offence characteristics, other social variables and treatment within the criminal justice system. With specific reference to juveniles charged with and convicted of serious crimes, it is important to consider how far the over-representation of minority groups reflects a difference of criminal behaviour or constitutes discriminatory treatment.

A study conducted by Feilzer and Hood (2004) has explored the treatment of minority ethnic young people at all stages of the youth justice process. The research examines differences in outcomes for young people according to ethnicity or gender, and examines whether these were justifiable in terms of case-related or other legitimate

factors, or whether there was evidence of discrimination. One of their key findings, which relates specifically to the present study, indicates that a higher proportion of black and mixed-parentage than white young offenders had been denied bail and remanded in secure conditions (Feilzer and Hood, 2004: 116). Additionally a higher proportion of young males from black, Asian and mixed-parentage backgrounds had been sentenced at the crown court. When case characteristics were taken into account, the odds for both secure remands and sentencing at crown court were only '*slightly higher*' in the cases involving young offenders from black and minority ethnic backgrounds compared to young white offenders (ibid: 118-119). In terms of the lengths of sentences imposed, however, a very significant finding indicates that for the cases that were dealt with at the crown court, and for those receiving a custodial sentence, a higher proportion of the black (92%) than the white (62%) males received a sentence of 12 months or longer (ibid: 111). In addition, a higher proportion of black (46.8%) than Asian (23.5%), white (25%) or mixed-parentage (13.3%) young males had been sentenced to longer-terms of detention for certain serious offences. When the cases involving longer-terms of detention were removed from the analysis, the proportion of young black males (85.2%), receiving a custodial sentence of 12 months or longer, was still nearly twice as high as the proportion of young white males (49.5%). When, however, all the cases sentenced to custody at the crown court were included in the analysis, the likelihood of a young black male's custodial sentence being 12 months or longer was 6.7 times greater than it was for a white male receiving a sentence of a similar length (ibid: 112). The authors of this research, therefore, conclude that:

The detailed analysis of sentences lengths imposed at the crown court confirmed that the higher proportion of young black males sentenced to custody of over 12 months was not explained by their case characteristics or any other legal or extra-legal variable ...and this evidence is consistent with discrimination against cases involving young black male defendants in the crown court ...as regards to the length of custodial sentence imposed.

Feilzer and Hood, 2004: 113-114

Feilzer and Hood's findings indicate that where juveniles are charged with serious offences (including violence and robbery) *and* the cases are referred to the crown court, offenders from black and minority ethnic backgrounds, and more specifically young black males, are treated more severely than white offenders in terms of the lengths of custodial sentences imposed. Consistent with these findings, the present

study will later demonstrate that a significantly higher proportion of the young male respondents from black and mixed parentage backgrounds had (a) been denied bail and remanded to prison custody and (b) sentenced to a minimum of four years detention (see chapter 5).

### **Relationships and Parenthood**

As a result of the youthfulness of the offenders at the time of the index offence and subsequent imprisonment (under the age of 18), none of the respondents were married, although 7 young males (5% of the total sample) reported that they were engaged and planning to get married on their release from custody. A further 56 male respondents (39%) indicated that they did have a girlfriend before entry into custody, and that these relationships were, at the time of the interviews, still continuing mostly via phone calls and/or letters. Only a very small proportion of these respondents, however, had received regular prison visits from their girlfriends (see chapter 6). There was only one female prisoner who said she had a boyfriend but he was also a co-defendant in the index offence and he too was serving a long custodial sentence. A small majority of the respondents (56%) reported that they were single with no girlfriend/boyfriend. In some of these cases, relationships had broken down during the period between the index offence and the subsequent custodial sentence.

Other findings from the present study show that 18% of the male respondents (n=25) were themselves fathers of very young children. In most of these cases (17/25) there had been very little contact with their sons or daughters before custody, most commonly because the relationship with the mother had broken down. In the remaining cases, however, respondents (8/25) reported that before coming into custody, they had been in regular contact with their children and had participated in a caring role. For this particular group, contacts with their children had been maintained through regular prison visits from their families/girlfriends. It was poignant that several young people, during the course of the interviews, revealed photographs of their children, and spoke proudly about their fatherhood.

Only one of the five female respondents was a mother. She had a young son but as a result of significant difficulties before custody, including serious substance misuse,



the child was permanently in the care of her mother, the maternal grandmother. Since her detention, however, this young woman had seen her son at regular intervals as a result of prison visits from her family.

### **Family background characteristics**

From an extensive theoretical and empirical base, it is broadly confirmed that an accumulation of adverse family characteristics and experiences are strongly correlated with the development of antisocial behaviour (West and Farrington, 1973, 1977; McCord, 1979; Rutter and Giller, 1983; Rutter et al., 1998; Farrington, 2000; Loeber and Farrington, 1998; Lösel and Bender, 2006: 49). The families of children who develop serious antisocial behaviour are more likely to experience significant structural problems and multiple deprivations, including poverty and low socio-economic status, single parenthood, unemployment, social isolation and other stressors (Lösel and Bender, 2006: 49). These factors place an enormous pressure on families and are likely to impact significantly upon the stability of family relations. Lösel and Bender observe that ‘within the development of serious antisocial behaviour issues of family interaction and childrearing appear to be particularly crucial’ (ibid: 50).

Extensive empirical studies have firmly established that, children and young people who engage in offending behaviour are more likely to have experienced parental disharmony and conflict including domestic violence, parental separation, cruel, passive or neglectful parenting and erratic or harsh discipline (see for example, Rutter and Giller, 1983: 180-81; Elliot, 1994; Hawkins et al., 1998; Rutter et al., 1998; Farrington, 1992, 1998). In addition, and most significantly, child neglect and abuse are particularly strong risk factors for serious and violent offending behaviour in the young (Widom, 1989; Zingraff et al., 1993; Smith and Thornberry, 1995; Hawkins et al., 1998: 134; see also Boswell, 1996, 2006; Bailey 1996). There is also evidence that exposure to severe and multi-dimensional maltreatment in childhood may be linked to offence-seriousness (Smith and Thornberry, 1995) and for those juveniles convicted of the most serious and violent crimes, studies have identified significant levels of separation, loss and abuse in their family lives (Boswell, 1996: 89-91; 2006: 131).

The family variables which are associated with serious delinquency are also predictive of recidivism within delinquent groups (Rutter and Giller, 1983: 181).

The exposure to a family life that is characterized by conflict, separation and harm constitutes a major source of trauma for children and young people. These experiences and manifestations of childhood trauma have been found to be strongly correlated with offending behaviour that can be both persistent and serious or violent. Bailey (2000) has observed that 'there is evolving evidence in the field of post traumatic stress disorder (PTSD) that children suffering the after-effects of traumatic stress can manifest this in later violence, with violent behaviour sometimes mirroring the traumatic experience the young person had endured as a victim' (Bailey, 2000: 98). Similarly, from his extensive and influential studies on childhood experiences of attachment, separation and loss, Bowlby has argued that 'the threat of loss arouses anxiety and actual loss causes sorrow, whilst both circumstances are likely to arouse anger' (Bowlby, 1979: 69). The theory of Attachment, developed by John Bowlby, provides a focus on parent-child relationships and, most specifically, the quality of the 'affectional' (emotional) bonds between a parent/care-giver and the child. Within this framework, children who experience disrupted and fractured affectional bonds, and/or where affectional bonds between a parent/parental figure and child are severely impaired (as a result of child neglect, abuse, rejection), may develop intense feelings of fearfulness, anxiety, grief, distress and anger. In turn, such childhood experiences are linked to a broad spectrum of conduct-disordered behaviours including aggression, later violence, persistent delinquency and adolescent mental health problems including depression and self-harm (Bowlby, 1958; 1968; 1973; 1979; 1980; see also Brown and Harris, 1978; Bifulco and Moran, 1998; Jowitt, 2003: 10).

Contemporary Attachment theorists have suggested that while insecure or disrupted attachments are not seen as pathological in themselves, they do constitute significant risk factors for a range of conduct-disordered behaviours (reviewed by Weinfield et al. in Cassidy and Shaver, 1999 and cited in Gregory, 2004: 71). It is also recognized that young people who have experienced disrupted and/or insecure attachments in childhood may also go on to display a disturbance in their own abilities to interact and relate with others including their own peer group (Harris-Hendriks, 2006: 216). This feature, together with unresolved feelings of rejection/anger/anxiety, may propel some

young people towards more antisocial or deviant affiliations and friendships (see further comments below). In addition, from the experience of insecure or disrupted attachments in childhood, some children and young people may become emotionally detached and this may both inhibit the ability to empathize with others and promote a de-sensitization to the suffering of others. Most importantly, these psychological traits might be particularly relevant to understanding the commission of a violent or other very harmful crime.

From the perspective of social learning theory, children who develop and are socialized within a chaotic or severely disorganized and conflict-driven family are likely to absorb this behaviour and its associated codes, which they subsequently utilize in their own social interactions. The witnessing of serious and persistent parental conflict and disharmony normalizes a pattern of behaviour, which in the eyes of a child, may appear to be an acceptable way of dealing with emotional pressures and stress. The effects of such learning may result in conflictual and aggressive behaviour in children both within and outside of the home. It is further observed that ‘families characterized by disharmony, conflict, aggression and violence serve as models for aggressive behaviour and reinforce it’ (Lösel and Bender, 2006: 50). The exposure to asocial parental behaviour and attitudes may also act to mould and shape a child’s view of the self and their position within the social world. Findings from the present study have identified a particular familial response which was expressed by one young male as, *‘in this world you have to stand-up for yourself and sort things out...if someone picks on you, you have a go at them, you fight with them if you have to... and you make sure that you win’* (see also Genders and Morrison, 1996: 36-37). Such messages and responses serve to re-enforce the use of aggression as a method of dealing with conflict, as opposed to consensual conflict resolution and problem-solving.

Further to the published research findings, the present study reveals the extent to which its sample of youthful offenders had experienced complex, difficult and deeply traumatic family lives, particularly childhood experiences of family separation, loss and abuse. As previously indicated, the experiences of multiple and severe childhood traumas are strongly correlated with serious and violent juvenile offending (see Table 4.2).

**Table 4.2 Childhood experiences of separation, loss and abuse**

<b>Family, Loss and Separation</b>	<b>Number of Young Offenders</b>	<b>Percentage of Total Sample</b>
Family of Origin Intact [This figure includes 2 adoptive families]	<b>23</b>	<b>16%</b>
Parental Separation/Divorce *Loss of contact with Father *Loss of contact with Mother Loss of contact with Mother and Father [The figures exclude Adoption (3 cases) and Bereavement]	<b>104</b> <b>66</b> <b>15</b> <b>9</b>	<b>73%</b> <b>46%</b> <b>10%</b> <b>6%</b>
The Death of a Parent/ other close relative/ friend Death of Father Death of *Mother Death of a close Grandparent/other close relative Death of a close Friend *Includes 1 adoptive mother [4 young people had experienced more than 1 bereavement involving close relatives or friends]	<b>24</b> <b>10</b> <b>3</b> <b>7</b> <b>4</b>	<b>17%</b> <b>7%</b> <b>2%</b> <b>5%</b> <b>3%</b>
Gained a Step-parent Step-father (38); Step-mother (6)	<b>44</b>	<b>31%</b>
<b>Childhood experiences of the care system</b> Involvement with Social Services Periods spent in the care of the Local Authority Spent some time living in a Children's Home Spent a period of time with Foster parents Children's Home and Foster Care	<b>62</b> <b>51</b> <b>46</b> <b>24</b> <b>21</b>	<b>44%</b> <b>36%</b> <b>32%</b> <b>17%</b> <b>15%</b>
<b>Familial Conflict, Violence and Abuse</b> Conflict/Violence between parents or carers Harsh physical punishment/abuse/cruelty **Repeat sexual abuse and victimization	<b>39</b> <b>44</b> <b>10</b>	<b>27%</b> <b>31%</b> <b>7%</b>

\* The figures include 9 Fathers and 3 Mothers who were living outside of the UK and in their countries of origin (Ghana, Columbia, Jamaica, Peru, Zaire, Philippines, Nairobi, USA). In addition 3 other Fathers were in the armed forces and were stationed overseas.

\*\* The figures include 8 respondents who had been the victims of repeat child sexual abuse; and 2 other respondents who had been the victims of sexual exploitation involving access to pornographic images and material from a young age.

For only a minority (16%) of the respondents was the family of origin intact, for most (73%) their parents were either separated or divorced. From a sub-sample of 75 respondents (for which data were available) almost half (49%) had been aged between 0-5 years at the time of the parental separation or divorce, with 31% aged between 6-11 years and one-fifth (20%) aged 12 years and over. These findings illuminate the extent to which family break-down had occurred in the early years of childhood. Amongst respondents who had experienced a parental separation in later childhood/early adolescence, it had been recorded (in pre-sentence reports) that this particular life event had been a '*traumatic experience*' and a cause of '*emotional stress*'. In some of these cases, the onset of offending had coincided with a parental separation or divorce.

The impact of parental separation on the young people is marked by their loss of contact with either one or both parents. From a total of 104 respondents whose parents were separated or divorced, almost two-thirds (63%) had lost contact with their father, 14% had no contact with their mother, and in 9% of these cases, there had been a cessation of contact with both parents. These findings show that following the separation of parents, losing contact with a father was particularly prevalent. In relation to the *total* sample, almost half (46%) had experienced the absence of a father and a stable father-figure for part or most of their lives, and 1 in 10 respondents had experienced a cessation of contact with their natural mothers (see table 4.2). This latter finding highlights the circumstances whereby certain respondents had experienced the loss of contact with a significant attachment figure - to whom the role of primary care-giver is usually attributed. Additionally, for the sample as a whole, just over 1 in 20 respondents had no personal contact with either of their natural parents. Underlying these findings, family structures were often complex and intricate. Almost one-third of the sample (31%) had gained at least one step-parent –

most commonly a step-father – and changing family structures often comprised a range of step-relations and half-siblings.

A sizeable minority (15%) of the respondents from black and other minority ethnic backgrounds (9/61) had spent the earlier part of their childhood living in their countries of origin, and had arrived to live in the UK during late childhood/early adolescence. For this particular group, the experience of loss was intensified by both a separation from family and friends, and a displacement from a familiar culture and society. These findings and observations are consistent with Boswell's study in which these matters were first highlighted (Boswell, 1996: 96; see also Boswell and Wedge, 2003: 58). In the cases where a young person had arrived into the UK with a parent (most commonly the mother) and siblings, they had still experienced separation from significant members of an extended family and friends. In other cases, young people arrived in the UK with one parent and siblings, to live with other relatives, but after a period of time, the parent returned to their country of origin, leaving the children in the UK. In these particular cases there was a cessation of direct contact with both parents<sup>26</sup>. These findings, while illustrating particular experiences of multiple loss and separation (including separation from both parents) also highlight the vulnerability of this specific group of young people.

Further to these experiences, and from other research examining the background characteristics of juveniles convicted of very serious crimes, Boswell and Wedge (2003) highlight two extreme cases where young people had arrived in the UK as children, having fled wars or other violent conflict in their native African countries. In these particular cases, the young people had witnessed the murder of family and friends as well as other violent atrocities (Boswell and Wedge, 2003: 58). The traumatizing effects of experiencing extreme violence, loss of life and bereavement during childhood are likely to be profound and - at a human level - almost unimaginable. But in addition to the experiences of separation and loss, Boswell and Wedge identify a range of other challenges faced by young immigrants in terms of adapting to life in a new country, settling into a new school environment, being able

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<sup>26</sup> In two other separate cases, a young person had arrived in the UK (unaccompanied) to live with other relatives. In one of these cases, two brothers went to live with an older brother who was subsequently found to be violent and abusive towards his younger siblings.

to negotiate differing cultural and social norms, learning a new language, making new friends and dealing with experiences of racism and bullying (ibid: 58).

### **Experiences of bereavement**

From an examination of bereavement across the sample as a whole, the findings from the present study indicate that more than 1 in 6 respondents (17%) had experienced, during childhood and adolescence, the death of a parent or other significant figure(s) in their lives, and some had experienced more than one bereavement involving close relatives and/or close friends. Almost 1 in 10 respondents had experienced the death of a parent: in most cases, the death of a father. It is broadly recognized that the death of a parent, particularly in childhood, constitutes a traumatic life event, and for one young male respondent aged 15 at the time of his father's death, it was recorded in his pre-sentence report that:

His Father's death appears to have left him in a state of depression, and he appears to have pushed his feelings of grief and sorrow away, he admits to going off the rails following the death of his Father. Before this event there was no history of offending and no previous criminal convictions.

For another young male respondent aged 13 at the time of his adoptive mother's death, it was reported that:

Shortly after the death of his mother, his behaviour at home became much more problematic and he was also committing offences including theft and burglary.

1 in 20 respondents had experienced the death of a significant relative including a grandmother or other very close family member. In these particular cases, the deaths had involved a relative who had also intermittently acted as a primary carer and for whom the respondents had close attachments. Although none of the respondents in the present study reported witnessing/experiencing the violent death of a parent or other close relative, a small proportion (3%) had experienced the death of a very close friend either as the result of a serious illness or a fatal accident/injury. One young male had witnessed the fatal shooting of a very close teenage friend who had been a street gang member, and was the victim of gang-related violence.

### **Childhood experiences of the care system**

Other experiences of loss include the separation from parents and other relatives as a result of spending periods of time in the care of the local authority. Almost half of the sample (44%) came from families where there had been some involvement with local social services, and over one-third (36%) had spent some time in either a children's home or foster care or both. The findings indicate the complex care histories that some respondents had experienced, which included a variety of care placements interspersed with periods of time spent living with their own families. Overall 15% of the total sample, and 41% of respondents who had spent periods of time in the care of the local authority, had experienced varied and multiple care settings within the triangle of a children's home *and* foster care *and* returning to live with a parent. This is consistent with findings from other research on populations of juveniles in custody, which have shown that a significant proportion had experienced being in the care system during childhood and/or early-mid adolescence. For example, a study conducted by HM Inspectorate of Prisons found that from a sample of juveniles in custody, 37% of boys and 43% of girls had spent time living in either a children's home or foster home or both (Challen and Walton, 2004: 6, 21). In a further study, almost half (49%) of the juveniles in custody reported having been in local authority care at some time (HM Inspectorate of Prisons, 2002: 10; see also Prison Reform Trust, Nov 2009: 29). Other research has also highlighted the experience of multiple care placements in a sample of young prisoners serving long custodial sentences (Boswell and Wedge, 2003: 26). All of this illustrates the complexities of individual family structures, relationships and family life for many young people in prison. The experience of being placed in the care system may generate and compound feelings of isolation and rejection, as well as intensify feelings of fear, anxiety and anger. These features are likely to be exacerbated in those young people with the most complex family backgrounds and care histories.

### **Parental conflict, child cruelty and abuse**

While a large majority of the respondents in this study had experienced varying degrees of disharmony and conflict between parents, culminating in separation or divorce, just over one-quarter of the sample (27%) had reported that their family lives



had been characterized by serious conflict and violence between parents. A significant proportion of respondents, therefore, had been exposed to episodes of domestic violence at varying stages of their childhoods. In cases where domestic violence had been recorded or reported, parental alcohol misuse was found to be a persistent feature. Further to the earlier discussion, there is strong evidence that exposure to high levels of family conflict, including violence between parents, can increase the risk of violence in adolescence (Farrington 1989; Maguin et. al., 1995; Hawkins et. al., 1998: 136-37). Other findings from the present study show that almost one-third of the sample (31%) had experienced episodes of physical abuse, harsh physical punishment and cruel treatment from one or both parents (including step-parents). The forms of physical abuse were, most commonly, reported as repeated 'beatings'/assault over a prolonged period of time. From the cases in which data were available (n=37) a majority (62%) of the perpetrators of child physical abuse were either a father or step-father, while in 27% of cases, the perpetrator was the mother, and in only a few cases (8%) both parents were involved. The incidence of physical harm by an older brother was reported from only one male respondent in this study. The findings relating to the experience of physical child maltreatment in the present sample are comparable to previous research, which found that in a sample of 200 juveniles convicted of very serious and violent offences (including murder), 40% had experienced physical abuse during childhood (Boswell, 1996: 89). Bailey (2000) has also emphasized that a 'cluster of family factors linked with later violence in the child includes cruel authoritarian discipline, physical control, and, in particular, the shaming and emotional degradation of the child' (Bailey, 2000: 98-99).

In considering other forms of child maltreatment, the incidence of childhood sexual abuse was recorded for 7% of the respondents in the present study. In a majority of these cases (8/10) there was a recorded history of very serious sexual abuse over a prolonged period of time. In the two remaining cases, sexually abusive experiences began at a young age and included the viewing of pornographic images and materials with adult family members. From the cases in which data were available (6/10) the perpetrators of sexual abuse were all family members including immediate stepfamily (stepfather x2; older stepsister x1) and members of an extended family (uncle x2; male cousin x1). Experiences of child sexual abuse are linked to a range of adolescent disordered behaviours including the infliction of harm to the self and others. Within

the general population of juveniles in custody, it has been estimated that one-third of girls and one in 20 boys report experiences of some form of sexual abuse (Prison Reform Trust, July 2010: 31). From a sample of juveniles serving long custodial sentences, however, Boswell found that 29% had been the victims of childhood sexual abuse (Boswell, 1996: 89; see also Boswell, 1997: 27). In this particular study, sexual abuse was defined very broadly as ‘any form of sexual exploitation of a child or adolescent, whether involving physical contact or not, by a sexually mature person’ (Boswell, 1996: 88). The much lower figures in the present study generally represent only those cases where there was documented evidence of serious sexual abuse. As a result, the findings are likely to be a significant under-representation of the true extent to which respondents had experienced sexual abuse/exploitation. From a research methods perspective, it is also broadly recognized that the experience of child sexual abuse, in particular, may remain contained within a young victim, and be hidden from, and undisclosed to, the outside world. These circumstances could be particularly pertinent to the young prisoner population.

### **Childhood trauma and index offence characteristics**

From the cumulative findings presented above, the research has examined the experiences of childhood trauma (separation, loss and abuse) amongst those respondents whose index offence involved the use of violence to inflict serious physical injury (Violence Scale I-III) and those for whom the index offence did not involve the use of violence (IV-VI). From this analysis, while the findings illuminate a commonality of family experiences between the two groups of respondents, there are particular experiences of not only severe intra-familial conflict, violence and abuse in the lives of juveniles convicted of serious violent crimes, but also experiences of multiple traumas including loss *and* abuse (see Table 4.3).

**Table 4.3 Childhood trauma and index offence characteristics**

<b>Experiences of Childhood Loss and Abuse</b>	<b>Violence Scale I-III (n=85)</b>	<b>Violence Scale IV-VI (n=55)</b>
Parental separation/divorce	65 (76%)	39 (71%)
Loss of contact with a parent; the death of a parent.	53 (62%)	36 (65%)
Multiple loss (parents/close relatives and/or friends)	11 (13%)	4 (7%)
Conflict/violence between parents/carers	27 (32%) *	12 (22%) *
***Childhood physical or sexual abuse	34 (40%)	20 (36%)
Domestic violence & physical child abuse.	21 (25%) **	9 (16%) **
Both loss and abuse during childhood	21 (25%)	12 (22%)

\* $\chi^2=6.13$ , 1df,  $p<0.05$     \*\*  $\chi^2=5.68$ , 1df,  $p<0.05$

Other findings are not statistically significant.

\*\*\* The figures include 5 young males and 2 of the 5 young females who had experienced both physical and sexual abuse.

Table 4.3 shows the similarities in the family backgrounds of the respondents convicted of a serious violent crime and those convicted of other serious offences in which violence was not used. The findings confirm the very high levels of parental separation and loss of contact with a parent (most typically a father) for both sub-groups of respondents. In addition, the incidence of child neglect and abuse was found to be almost equally distributed across the two sub-samples. However, amongst those respondents convicted of an offence involving violence (n=85), one-third had been brought up in households characterized by serious parental conflict and episodes of domestic violence, compared to 1 in 5 (22%) of those convicted of a serious offence in which violence had not been used. In addition, one-quarter of those convicted of a violent crime had been exposed to domestic violence coupled with physical child abuse, compared to 16% of the non-violent group. These findings appear to indicate that more of those convicted of a violent crime had both witnessed *and* physically experienced violence within the home. Nonetheless, within the overall context of childhood trauma, very similar proportions of those convicted of a violent offence (25%) and those whose index offence had not involved the use of violence (22%) had experienced both loss and abuse during childhood. This finding illuminates the extent to which experiences of multiple traumatic events in childhood (separation, loss and abuse) were almost equally distributed across both sub-groups of respondents.

The following cases studies collated from interview data and case records illuminate individual experiences of childhood loss, separation and abuse.

### ***'David'***

David experienced severe loss and abuse during his childhood and adolescence. His parents separated when he was an infant. He continued to live with his mother and sister. At the age of 11 years, David revealed that he had been sexually abused, over a prolonged period of time, by a family member. The adult perpetrator was subsequently convicted and sentenced to 10 years imprisonment. David's sister was also sexually abused by a male who was in a relationship with their mother. Following this revelation, the mother then severed all contact with her children. Thereafter, David spent some periods living with other family members before he was taken into the care of social services. He then lived in a children's home and spent other periods living with foster parents. Intermittently, David went to stay with his biological father with whom it was reported that he had a close relationship. During one such stay with his father, David was again a victim of sexual abuse. At this stage he was just 13 years old. After this, he was accommodated by social services. As a result of these experiences, it was recorded that 'he is a very troubled young man experiencing personal and psychological trauma and emotional confusion'. David committed the index offence at the age of 15.

### ***'Jonathon'***

Jonathon has been in and out of the care system since he was a young child. His mother found it very difficult to cope after she separated from her husband. At the age of 3 years, Jonathon was made the subject of a Care Order and after brief and intermittent periods in residential care, he was eventually placed with foster parents. At the age of 13, his foster placement broke down as a result of him stealing from his foster parents and he was returned to live with his mother. Jonathon wanted to make a go of living at home with his mother, but he did not get on with his mother's new partner. The situation broke down and he was placed in a residential school. At this placement his behaviour was problematic and he was committing crime. Subsequent placements to other residential schools were unsuccessful. At the age of 16, he returned to live with his mother and the Care Order was discharged. Jonathon's offending behaviour escalated and the index offence was committed just before his 17<sup>th</sup> birthday.

### ***'Daniel'***

During his early childhood, Daniel witnessed serious domestic violence and experienced severe and persistent physical harm and punishment from his natural father. Daniel's parents were divorced when he was 9 years old and since that time he has had no contact with his natural father. At the age of 11, he was physically assaulted by his mother's new partner and this resulted in the involvement of social services and the child protection team. Subsequently, Daniel was removed from the care of his mother and placed to live with an aunt. At the age of 13 he started associating with a delinquent peer group and committing crimes. The index offence was committed when Daniel was aged 14.

### **The experiences of loss and abuse: young female serious offenders**

The female respondents in this study (n=5) had most typically experienced high levels of intra-familial conflict, violence and abuse during childhood. In addition, other experiences of *extra*-familial abuse and exploitation during adolescence were also found to be prevalent. From an examination of individual inmate prison files and interview data, the findings reveal that 4 out of the 5 female respondents had experienced the separation of their parents and loss of contact with the absent parent (father). Four of the girls had been exposed to a family life over-shadowed by episodes of domestic violence. All but one had spent some periods of time in the care system including one young female respondent who had been adopted as a very young child. In addition to experiences of loss and separation, it was also found that all five girls had experienced episodes of physical abuse and/or neglect during their childhoods and two girls had also been the victims of intra-familial sexual abuse. These experiences of violence and abuse from within the family had also, in certain cases, been visible in other areas of social life outside of the family. Three of the five girls had experienced abuse from males within the wider social community, where one girl had been forced to work as a prostitute from the age of 12 and another had engaged in early sexual activity becoming pregnant and giving birth to a child at the age of 14. Another female respondent also disclosed (at interview) that she had been raped by a much older male acquaintance at the age of 13 but had not reported this to the police. From these findings, there are indications that the experiences of multiple traumatic events in childhood/adolescence found to be present in young males, are likely to be even more prevalent in samples of serious young female offenders.

### **Parental and family criminality**

From the literature and research, it is established that parental criminality is a significant risk factor for the development of serious offending behaviour in children and young people (Rutter and Giller, 1983: 182; Farrington, 1989; Hawkins et al., 1998: 133-34). From the assertion that 'antisocial parents tend to have antisocial children, it remains very unclear as to how far this transmission is attributable to genetic as opposed to environmental factors' (Bailey, 2000: 99). Together with inter-generational experiences of social deprivation and poverty, there is a broad consensus

that violent norms and/or behaviours are likely to be *learned* in criminal families (see Hawkins et al., 1998: 134). Moreover, from the observation that cycles of violence are not closed (Widom, 1989), inter-generational offending is far from being inevitable. The present study attempts to shed further light on the experience of parental criminality and the prevalence of sibling delinquency in a sample of violent and other serious juvenile offenders. The analysis, based primarily on interview data, provides a wider view of offending within families and illuminates both the presence and absence of inter-generational criminality (see Table 4.4).

**Table 4.4 Family Criminality**

<b>Family Criminality</b>	<b>Number of Young Offenders (with percentages)</b>	<b>Percentage of Total Sample (n=128*)</b>
Those with at least 1 family member with a criminal record/history of offending	65	51%
Those with multiple offenders in the family	35	27%
Family members with a history of offending:		
Father/Step-Father	14 (22%)	11%
Brother(s)	34 (52%)	27%
Uncle(s)	12 (18%)	9%
Cousin(s)	21 (32%)	16%
Relationship not specified (4 cases)		
Combinations of relatives with a history of offending:		
Father and brother(s)/step-brother(s) ( <b>5</b> ); Brother(s) and Uncle(s)/cousin(s) ( <b>7</b> ); Uncle(s) and Cousin(s) ( <b>2</b> ); Father And Mother ( <b>1</b> ); Grandfather and Step-Father ( <b>1</b> ); Step-Father, Uncle and Cousins ( <b>1</b> ); Father and Step-Father ( <b>1</b> )	18 (28%)	14%
Those for whom a parent or a brother has also served a custodial sentence (past and present)	**20 (31%)	16%

NB: \*The total percentage figures in column 3 are based on 128 cases in which data were available.

\*\* This figure includes 10 respondents who reported that during their own current custodial sentence, a close family member (a brother in 9 cases and a step-father in 1 case) was also in a prison or a YOI at the same time. In 2 cases the family member (brother) had also been a co-defendant in the index offence.

From a sample of 128 respondents, half (49%) reported that no other members of their immediate families had been in trouble with the police. Most typically, these young people had alluded to their families as being '*law abiding*'. However, the other half of the sample (65/128) indicated, at interview, that within their families there was at least one other member with a history of offending and 1 in 4 reported having multiple offenders in their families. The family members most frequently cited as being involved in criminal behaviour were brothers (including half-brothers) followed by male cousins. From the total sample (n=128), 1 in 4 respondents reported the incidence of (male) sibling delinquency. Additionally, other respondents had also alluded to having 'troublesome' younger brothers in their families. Just over 1 in 10 respondents (11%) reported criminality involving a father or step-father. In these particular cases, respondents had either directly witnessed a parent being arrested by the police or they had been aware of such activities taking place. From the figures presented, it is also important to note that in view of the high rates of parental separation and loss of contacts, reliable information concerning an absent biological father, step-fathers and/or extended families was often unavailable to the respondents. Only one young male had indicated that his mother, as well as his father, had committed offences and had been arrested by the police. With the exception of this case, female criminality in the families of the respondents was markedly absent.

From the perspective of criminal kin and intergenerational criminality, 14% of the total sample (18/128) reported being members of large and extended criminal families (see Table 4.4). Correspondingly, an analysis of individual case records (pre-sentence reports) confirmed that serious antisocial and offending behaviour was embedded in the lives of these families and was transmitted across and within the generations. With specific reference to family criminality and the severity of offending, just over 1 in 6 respondents reported that a close relative (parent/brother) had served a custodial sentence. Furthermore, from a total of 20 respondents, 10 had indicated that during their own current period of detention, a close relative (a brother or in 1 case a step-father) was also serving a term of imprisonment. The cumulative findings reveal a significant level of male sibling delinquency, although parental criminality (overall) appeared to be comparatively low. This finding may reflect the socialization of siblings in households where parental conflict, violence and/or abuse are contained within a domestic setting. Under such circumstances, parents or parent-figures may or

(more likely) may not be involved in criminal behaviour outside of the home. The research also encapsulates the extent to which criminality was found to be solely concentrated in the younger generation of family members and illuminates the comparatively small proportion of respondents exposed to extensive inter-generational criminality.

### **School-life and educational attainment**

In addition to often complex family histories, many young offenders will have experienced unsuccessful school lives characterized by poor school performance and low levels of educational attainment. For populations of serious juvenile offenders in custody, it is confirmed that most will have a history of school truancy, exclusion, under-achievement and no formal educational qualifications (HM Inspectorate of Prisons, 2002). It has also been found that amongst those of school age in custody, over one-quarter have literacy and numeracy levels of an average seven year-old (Youth Justice Board, 2003). This latter finding reflects the incidence of young prisoners with the most severe learning problems/deficits. The experiences of poor school performance, low educational attainment, truancy and early school leaving are all linked to an increased risk of serious juvenile offending (Farrington, 1989; Maguin et al, 1995; Maguin and Loeber, 1996; Hawkins et al., 1998: 138-139; Lösel and Bender, 2006: 51; see also Bailey, 2006: 31). In addition to a range of individual-based characteristics (IQ, pupil behaviour and discipline), it is broadly recognized that family and home life are likely to have an impact upon the consistency of schooling, educational engagement and attainment. Children and young people from deprived and dysfunctional backgrounds are more likely to experience difficulties at school. As well as issues of school attendance and pupil behaviour, the families of these children may fail to support and encourage their education or place little value on the educational system (Farrington, 1992). As a consequence, these children in particular, constitute a highly vulnerable group at risk of serious juvenile offending. Within the myriad of at-risk factors, studies have strongly identified that education is a potential protective factor in the development of antisocial and offending behaviour (see Wilson and Reuss, 2000).



Other studies have also highlighted that pupil experiences of low motivation, difficult relationships with teachers and poor bonds to the school, together with issues of truancy and under-achievement, increase the risk of serious antisocial behaviour (Hawkins et al., 1998: 138-39; Lösel and Bender, 2006: 51). Additionally, and importantly, poor school performance and low attainment levels may (further) reduce levels of self-confidence and self-worth, as well as severely limit post-school opportunities with regard to youth employment and/or training. These accumulated experiences provide significant markers in the development of serious antisocial behaviour. In addition to the causes and effects of non-school attendance and (self-imposed) truancy, children and young people who are permanently excluded from school constitute a highly vulnerable and at-risk group. In such cases, underlying issues concern both pupil behaviour as well as the effects of being out of school. For example, the incidence of challenging, disruptive and/or aggressive behaviour (most likely to result in pupil exclusion) might be transported from the classroom to the street/local community. The experiences of permanent school exclusion may also compound (existing) feelings of rejection, isolation, frustration and anger. Studies have found that in populations of juveniles in custody up to 45% have been permanently excluded from school (Prison Reform Trust, April 2006: 22).

It is also recognized that children and young people with emotional and behavioural disorders (EBD) and/or special educational needs (SEN) are at greater risk of being excluded from school (Hayden and Dunne, 2001: 6; see also Jowitt, 2002). For these children, therefore, school exclusion may present an additional risk of antisocial/offending behaviour. In addition, studies show that the rates of permanent school exclusion for pupils from minority ethnic backgrounds and, in particular, young black males are proportionately higher than the rates for white pupils (Bourne et al., 1994; Hayden, 1997: 17; Majors et al., 2001: 106; Jowitt, 2002). These findings highlight the increased vulnerability of particular groups of young people with regards to both exclusion from school and the corresponding risk of offending behaviour. For other groups of children and young people (including and most specifically those in the care system) the circumstances and experiences of a much disrupted education may add to a range of inter-related (or pre-existing) risk factors.

The findings from the present study provide a further insight into the experiences of truancy, exclusion, low levels of educational attainment and under-achievement in a sample of young offenders convicted of violent and other serious crimes. The study also illuminates the extent to which respondents had experienced significant behavioural and/or learning problems at school (see Table 4.5).

**Table 4.5 Selected school experiences and educational attainment**

Education and School Experiences	Number of Young Offenders & Percentage of Total Sample	
<b>Exclusion from School</b> [Permanent exclusion from at least 1 secondary school and/or several temporary exclusions]	89	(63%)
<b>School Truancy/Non-Attendance</b> [Occasional/irregular truancy (24); persistent/regular truancy (82)]	106	(75%)
<b>Non-Mainstream Education</b> [Special/Residential School/ Referral Unit for Excluded Pupils]	43	(30%)
<b>Recorded Special Educational Needs/Learning problems in Childhood</b> [Including recorded poor reading/writing/language skills/ dyslexia]	39	(27%)
<i>Self-Reported left school unable or barely able to read and/or write</i>	8	(6%)
<i>Self-Reported difficulties with reading and/or writing on entry into custody</i>	35	(25%)
<b>Age on Leaving School (permanently)</b>		
14 and younger	48	(34%)
15	61	(43%)
16	29	(20%)
[The figures include the cases where education was prematurely ended as a result of the index offence and subsequent remand to custody]		
<b>Educational Qualifications from School</b>		
*1 or more GCSEs	9	(6%)
AEB qualifications/other certificates of achievement	9	(6%)
No educational qualifications	122	(86%)
* This figure includes 6 young people who had gained 5 or more GCSEs. ** 3 young people were preparing to take their GCSEs but as a result of the index offence they were not able to take their examinations. In addition a further 13 young people with no educational qualifications had been identified as 'articulate', 'bright', 'capable' students who were doing well at school (from pre-sentence reports)		

The percentage calculations are based on 142 cases

Key findings from the empirical data show that a large majority of the respondents had a history of school non-attendance, truancy and exclusion. The rates of permanent exclusion were found to be particularly prevalent in the respondents from black minority ethnic backgrounds. These findings allude to experiences of disaffection with school life as well as conduct/behavioural problems at school. The following comments from two respondents illustrate such experiences:

I was expelled from primary schools and that for like getting into trouble and got put in a secondary school and got kicked out of that and then no other school wanted to take me. I used to go into a school unit about once or twice a month. School's nothing anyway, I don't like people trying to have authority over me.

Young male convicted of attempted murder and sentenced to 7 years detention

I did all my first year then going into my second year, I started not going. I got suspended just before the six weeks holiday, then it was the six weeks holiday and I didn't want to go back. My mum brought me to school and then I just pretended to go and then I'd sneak off... I stopped going altogether by the third year. I didn't really like school, I didn't really know the maths and that's why I started wagging it cos it was the lessons that I didn't want to do. A woman comes round when you don't go to school she sorted it out so that I could go into school like for three lessons a day, for three lessons that I wanted to do just to get me started going again. After that I got bored with them as well, the same old things every day...I left and never went back.

Young male convicted of commercial robbery and sentenced to 4 years detention

Almost one-third of the sample (30%) had spent periods of time outside of mainstream education in either a special non-residential or residential school and/or a pupil referral unit (PRU). This finding isolates a sub-group of respondents identified as being in need of separate educational and therapeutic support. From the perspective of education and learning: evidence from inmate files and interview data revealed that just over 1 in 4 respondents (27%) had a history of poor literacy and numeracy skills or dyslexia, language deficits and associated attention disorders. Similarly, on admission into custody, 1 in 4 respondents reported major difficulties with reading and writing, while 8 (7 males and 1 female) had been unable or 'barely able' to read or write. These experiences may not only be a contributing factor to - or an outcome of - disruptive and problematic behaviour at school, but they may also predispose some children and young people to the risk of bullying as a victim and/or a perpetrator. Evidence from the empirical data confirms that personal experiences of

being bullied at school and/or bullying others were not uncommon in the present sample of serious young offenders. These features may also contribute to the use of aggressive behaviour outside of the school environment.

In relation to school leaving age, only 1 in 5 of the young offenders in the present study had managed to complete their secondary education up to the age of 16. As a result, most of the respondents (86%) had left school with no educational qualifications: only 6% of the sample had obtained one or more GCSEs. The high rates of school drop-out identified are consistent with low educational attainment and under-achievement. Underlying these pessimistic figures, however, it is interesting to note that the sample includes a number of respondents (n=13) described (in pre-sentence reports) as ‘articulate’, ‘bright’ and ‘capable’ students who were doing well at school. Additionally, although a significant minority of the respondents did have a history of serious learning deficits at school, for the majority this did not appear to be the case. The high levels of under-achievement at school across the sample appear to be more visibly linked to school disaffection, non-attendance/truancy and exclusion. Addressing these issues via an all-embracing *inclusive* education system may play an important role in the reduction of youth crime.

### **Histories of offending and previous criminal convictions**

Two-fifths of the respondents in the present study had started to offend as children before reaching their 13<sup>th</sup> birthdays. Most typically, these particular respondents were persistent offenders with multiple previous criminal convictions. However, the sample also includes young people with no recorded history of offending and no previous convictions. These findings serve to further highlight the non-homogeneity of children and young people who are convicted of very serious crimes. From the literature, it is broadly confirmed that the early onset of offending is a strong predictor of persistent or chronic offending and recidivism (Loeber et al., 1998: 23; Moffitt, 2003; Piquero and Moffitt, 2005: 51-72; Burfeind and Bartusch, 2011: 95-112). In turn, the persistency in offending may lead to an escalation in offence-severity with increasing age (Farrington, 1996). An early onset of offending, therefore, is also linked to the development of violent and other serious delinquency (Loeber et al., 1998: 23; Tolan and Gorman-Smith, 1998: 76-79). This developmental pathway, which can be

distinguished from the much more prevalent adolescent-limited antisocial behaviour, is consistent with the criminal careers of persistent, serious and violent offenders (see Moffitt, 2003; Lösel and Bender, 2006: 43). It is, however, also recognized that some juveniles convicted of the most violent and/or other very serious offences have no recorded previous history of offending/no previous criminal convictions and a later onset of offending (Boswell, 1996; Boswell and Wedge, 2003: 27). In such cases, a very serious juvenile crime may represent an isolated or ‘one-off’ criminal act as opposed to a continuum of criminal activity. The complex and variant patterns in the criminal careers of juveniles convicted of very serious crimes are further illuminated in the present study. Comparative figures reveal the extent to which the respondents convicted of a violent index offence (violence scale I-III) and those convicted of other serious crimes (IV-VI) had shared and similar criminal histories. The empirical findings are based on an extensive collection of data from official records and interviews with young prisoners <sup>27</sup> (see Table 4.6).

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<sup>27</sup> With reference to the figures presented, lists of previous criminal convictions were usually available. In the cases where numbers of previous convictions were not clearly discernible, calculations were made from the relevant supplementary material (court appearances; previous sentences). The figures do not necessarily reflect the number of previous offences. Information relating to the age at onset of offending was obtained from either pre-sentence reports (PSRs) or was self-reported.

**Table 4.6 Criminal Justice System History**

Violence and Harm Scale (I-VI)				
CJS Variables	I-III (85)	IV-V (43)	VI (12)	TOTALS
Previous criminal convictions				
0	28 (33%)	12 (28%)	3 (25%)	43 (34%)
1-3	27 (32%)	10 (23%)	4 (33%)	41 (33%)
4-6	14 (16%)	13 (30%)	4 (33%)	31 (25%)
7+	6 (7%)	4 (9%)	1 (8%)	11 (9%)
.....				
A previous conviction for				
Violence (incl. Robbery)	38 (45%)	23 (53%)	3 (25%)	64 (46%)
.....				
Previous custodial sentences				
0	63 (74%)	27 (63%)	9 (75%)	99 (71%)
1-3	22 (26%)	16 (37%)	3 (25%)	41 (29%)
.....				
Age at first conviction				
11-12	6 (7%)	6 (14%)	3 (25%)	15 (12%)
13-14	28 (33%)	16 (37%)	3 (25%)	47 (38%)
15-16	32 (38%)	13 (30%)	5 (42%)	50 (40%)
17	10 (12%)	3 (7%)	-	13 (10%)
.....				
Age at onset of offending [Self-Reported and Case Records]				
8-12	29 (34%)	17 (40%)	5 (42%)	51 (41%)
13-14	27 (32%)	19 (44%)	4 (33%)	50 (40%)
15-16	17 (20%)	3 (7%)	3 (25%)	23 (18%)
17	-	1 (2%)	-	1 (1%)
.....				
Self-Reported Persistent				
Offending	46 (54%)	31 (72%)	7 (58%)	84 (60%)
.....				
Self-Reported Violent				
Offending	41 (48%)	21 (49%)	3 (25%)	65 (46%)

NB: The percentage figures in the final column are based on 140 cases except for variable 1 (126 cases); variable 4 (125 cases) and variable 5 (125 cases).

From an analysis of the onset of offending behaviour, the cumulative figures reveal the extent to which respondents had started to offend in the pre-teen years (under 13) or early adolescence (13-14) and those for whom there had been a later onset of offending (15-17). Within a broader context, the age at onset of offending is also likely to reflect the experience of other related social and/or psychological difficulties or coincide with traumatic/difficult life events. The causes of offending, therefore, are likely to be inextricably linked to the age at which offending behaviour starts. Findings from the present study show that 2 in 5 respondents had experienced an early onset of offending occurring between the ages of 8 and 12 years. In these particular cases, although patterns of offending were found to be very variable, offending tended to be intermittent and persistent with increasing severity over time. Statistical analysis of the empirical data revealed a strong link between the early onset of offending and family deprivation, dysfunction and abuse. A further two-fifths of the sample had started to offend between the ages of 13 and 14 years. In these cases offending had coincided with the early period of transition from childhood to adolescence. Additionally, 1 in 5 respondents had a recorded or reported later onset of offending, most typically between the ages of 15 and 16: only 1 male respondent had committed his first offence at the age of 17. In many cases (but not all), the mid-adolescent years were characterized by a (further) dislocation from family, non-school attendance/truancy, strong peer group affiliations and the misuse of alcohol and/or drugs. These features may not only contribute to a later onset of serious and violent juvenile offending (causality) – but they can also represent outcomes and additional layers of risk for children and young people with an early onset of offending.

Other findings from the empirical data show that in relation to age at first criminal conviction, half of the sample was aged between 11 and 14 years old, while the other half were aged between 15 and 17. This latter sub-group includes those for whom the index offence represented a first criminal conviction. In comparison to the previous figures presented, the cumulative findings illuminate the time/age delays between the onset of offending and receiving a first criminal conviction (see Table 4.6). It is interesting to note that 1 in 3 respondents had no recorded history of offending/no previous criminal convictions prior to the index offence. In these cases, there appeared to be no offending markers to suggest the commission of a very violent or other serious juvenile crime. However, a majority of the respondents (66%) did have



previous criminal convictions, although the lengths of individual criminal records were variable. A third of the sample had received between 1 and 3 previous criminal convictions, and a final third had 4 or more. The latter groups comprise a population of persistent offenders, three-quarters of whom (64/83) had received at least one previous conviction for a violent crime including robbery.

At interview, three-fifths of the sample had disclosed that they had been engaged in intermittent and persistent offending prior to the commission of the index offence. In most of these cases, offending had involved acquisitive crimes including theft and robbery. Almost half of the total sample (46%) had self-reported that they had committed offences involving actual and/or threats of violence during the period preceding the index offence. This offending had more typically involved local and city-centre based street robberies and/or other acts of violence (fighting, assaults) against other young males. For these particular victims, such crimes are less likely to be reported to the police and, therefore, remain undetectable. As an adjunct to the previous convictions data, the findings from the present study confirm that for a small majority of the respondents, a pattern of persistent offending including the use of violence (actual or threatened), was evident during the period leading up to the commission of the index offence(s).

With regard to recorded previous offending and offence-severity, it is interesting to note that almost half of those with previous criminal convictions (41/83) had already served at least one custodial sentence before the commission of the index offence. This includes 15 young males who had received between 2 and 3 previous custodial sentences, including short-term and longer periods of detention. For the sample as a whole, between one-quarter and one-third (29%) had served at least one previous custodial sentence prior to the commission of the index offence. Other figures also show that half of those with previous convictions (42/83) had received only non-custodial sentences. Cumulatively, the findings indicate that a majority of the respondents in this study (71%) had never served a custodial sentence prior to the commission of the index offence. This brings into sharp focus, a combined experience of being young, in prison for the first time, *and* serving a long period of detention. Within this large sub-group (99/140), while just over half had been placed on remand

prior to the conviction, for other respondents, the world of secure confinement and imprisonment was completely unknown to them (see chapter 6).

## **II: OTHER ADOLESCENT EXPERIENCES**

From a detailed exploration of family life, education and offending history, the present study also reveals the extent to which respondents had experienced problematic, turbulent and/or chaotic social lives *in adolescence*. From an understanding of individual and collective life-styles, other links to offending behaviour – and its severity - can be further discerned. Firstly, the research examines the use of alcohol and drugs amongst young people generally and in populations of young offenders. The findings demonstrate the prevalence of serious drug and alcohol misuse in juveniles convicted of violent and other serious crimes. Other issues relating to adolescent mental health, including the incidence of self-harm *before* custody, are also examined. Such experiences are not only linked to traumatic or very problematic childhood backgrounds, but also represent a continuum of harmful and risk-taking behaviour. Secondly, the research examines associations with delinquent peer groups and gang-membership. These latter features are strongly correlated with violent and other serious juvenile crime, and may also signify other youthful experiences of social isolation and alienation from the wider community and/or mainstream society. The broader empirical findings are considered in the light of contemporary multi-theoretical and multi-disciplinary adolescent studies.

### **Alcohol and drug misuse in adolescence**

Within the contemporary criminological literature it is well-established that the incidence of alcohol and drug use amongst young people is widespread and common. With specific reference to drug use, it is suggested that ‘in young people the use of drugs for experimental, recreational and social reasons appears to be widespread’ (Muncie, 2004: 35). From a self-report study of 14-25 year olds conducted by Graham and Bowling in 1995, it was found that 45% of the young males and 26% of the young females had, at some time, used illegal drugs (Graham and Bowling, 1995: 13). It has also been identified by Muncie (2004) that successive British Crime Surveys

have estimated that around 1 in 2 young people will have tried an illicit drug at some point in their lives (Muncie, 2004: 35). Other research has also found that the most common illegal drug used by young people is cannabis, and the prevalence of cannabis use is much higher than the use of other drugs (Graham and Bowling, 1995; Sanders, 2005). Since the 1980s there has been a significant increase in drug use amongst young people, and this includes the use of cannabis and other drugs such as LSD, amphetamines, ecstasy, heroin, cocaine and poly-drug use (Parker et al, 1995 cited in Newburn, 1997: 633; Drugscope, 2006). The use of illicit drugs increases sharply in the mid-teens, and peaks in the late teens or early twenties (Institute for the Study of Drug Dependence, 1994).

The criminological literature indicates that the rates of alcohol and drug misuse are particularly prevalent in populations of young offenders: ‘young people who engage in antisocial and delinquent behaviours are at an increased risk of several deleterious outcomes including substance misuse and dependence’ (Bailey and Marshall, 2004: 165). There are also indications that the prevalence of *serious* drug misuse and dependence is higher in populations of persistent and serious young offenders. Samples of persistent young offenders have been identified as having higher levels of drug and alcohol use compared to the general population of young people (From the summary of a retrospective study of persistent young offenders, Youth Justice Board, 2004). In addition, it has been found that persistent and serious young offenders have a higher prevalence of using ‘harder’ drugs including ecstasy, amphetamines, cocaine, LSD and heroin (Muncie, 2004: 37). There is strong evidence that as the seriousness of offending increases, so does the seriousness of drug use, both in terms of the types of drugs used and in the frequency of use (Huizinga and Jakob-Chien, 1998: 48). The findings from the literature, therefore, reveal a strong relationship between serious or persistent offending and substance misuse.

Other research has also confirmed that adolescent drug use/misuse is a significant feature in the backgrounds of sentenced young people in custody. In research conducted by HM Inspectorate of Prisons, from a sample of 171 young people under 18 in custody, only 11% said that they had never used an illicit drug (HM Inspectorate of Prisons, 2002: 10). Another study of young offenders in custody by Bailey and Marshall (2004: 168) found that 96% of sentenced young men and 84% of sentenced

young women had tried illicit drugs. The Prison Reform Trust (PRT) has revealed that within a population of young sentenced prisoners aged 16-20, over half reported dependence on a drug in the year prior to imprisonment, and over half of the young female prisoners and two-thirds of the young male prisoners reported a hazardous drinking habit before entering custody (Prison Reform Trust, 2006: 22). The present study has, therefore, attempted to measure the incidence of adolescent substance misuse (pre-custody) in a sample of young people located at the very serious end of the juvenile offending spectrum and serving long periods of detention. The main research findings not only confirm the prevalence of alcohol and drug misuse, but they also illuminate the *severity* of this behaviour (see Table 4.7).

**Table 4.7: Adolescent alcohol and drug misuse**

Alcohol and Drug Misuse	Violence Scale I-III (n=85)	Violence Scale IV-VI (n=55)	Totals (n=140)
<b><i>Drug Misuse:</i></b>			
<b>Drug Misuse I</b> = *regular use of Class A drugs <Heroin, Crack-Cocaine> Recorded Addiction (n=16) = (12%)	19 (24%)	23 (45%)	42 (32%)
<b>Drug Misuse II</b> = *regular use of other drugs (cannabis, amphetamine, valium, others)	36 (45%)	18 (35%)	54 (41%)
No reported use of illegal drugs (Never/ Tried but not continued)	25 (31%)	10 (20%)	35 (27%)
<b><i>Totals (and from which % is based)</i></b>	<b>80</b>	<b>51</b>	<b>131</b>
<b><i>Alcohol Misuse:</i></b>			
<b>Alcohol Misuse I</b> = drinking alcohol every day or on most days	19 (24%)	10 (18%)	29 (22%)
<b>Alcohol Misuse II</b> = drinking more than 8 units on a single day at least once a week (most usually at weekends)	20 (25%)	16 (30%)	36 (27%)
No reported use of alcohol or very little use of alcohol	41 (51%)	28 (52%)	69 (51%)
<b><i>Totals (and from which % is based)</i></b>	<b>80</b>	<b>54</b>	<b>134</b>

NB: \*Regular use denotes repetitive behaviour during adolescence and not just at the time of the offence

Key figures illustrated in table 4.7 show that three-quarters of the sample (73%) had regularly used/misused illicit drugs during adolescence. In relation to the severity of drug misuse, one-third (32%) reported the regular use of Class A drugs including heroin and crack-cocaine. From this latter sub-group, 16 out of 42 respondents had a recorded history of serious drug addiction to, most typically, heroin. Most of those who identified a Class A drug as their drug of choice were also found to be poly-drug users. These findings, while illuminating the incidence of serious drug misuse, may also allude to aspects of lifestyle and troubled or chaotic social lives. For two-fifths of the sample, the use of illicit drugs was confined to the regular use of cannabis and/or other substances including amphetamines, tranquillizers, temazepam and solvents. These respondents had typically reported the use of cannabis and/or other substances either daily or on most days, although less frequent substance misuse ranging from once a week to once a month was also reported. Only about one-quarter of the sample (27%) reported no drug misuse, and this included those who had never taken illicit drugs and others who had experimented with drugs in the past but had not continued to use them. A key picture from the present study illustrates the extent to which drug misuse was found to be a routine feature in the lives of serious young offenders.

In addition to illicit drug use, just under half of the sample (49%) had reported misusing alcohol during adolescence. One in five of the respondents reported drinking more than 8 units of alcohol every day or on most days, while a further quarter of the sample (27%) had reported drinking excessively (more than 8 units of alcohol) on a single day at least once a week. Interestingly, just over half of the sample (51%) had reported either no use of alcohol or very little use of alcohol during adolescence, indicating that for this particular sample of serious young offenders in custody, the prevalence of drug misuse was greater than the misuse of alcohol.

One of the most striking findings from the present study shows that, at the most serious end of the substance misuse spectrum, 12% of the sample had experienced a serious drug addiction to either heroin or to a lesser extent crack-cocaine. In addition, one-third of the sample (45/140) reported *either* an addiction to Class A drugs *or* serious alcohol misuse (drinking more than 8 units of alcohol daily or on most days): 6% had experienced both an addiction to Class A drugs and *simultaneously* serious alcohol misuse. These findings, in particular, further illuminate the prevalence of

major juvenile drug and alcohol misuse in a sample of serious young offenders. In addition, although the number of female respondents is very small (n=5) and the findings are not statistically significant, 3 out of 5 had a history of misusing drugs including heroin and crack-cocaine, while 4 out of 5 had misused alcohol during adolescence, including one young female who had started drinking alcohol at the age of 9. This research, therefore, also shows that the misuse of alcohol and drugs was found to be a particularly prevalent feature in the backgrounds of the female respondents in this study.

Other figures illustrated in table 4.7 reveal that almost half (45%) of the respondents convicted of a serious acquisitive index offence with no actual violence (scale IV-VI) had a history of misusing Class A drugs. This is in addition to 1 in 4 of those convicted of a violent and predatory index offence (violence scale I-III). These findings allude to a particular relationship between serious drug misuse/addiction and the commission of serious acquisitive crimes which focus on personal gain. As previously described, some of the respondents reported that the index offence had been committed in order to fund a serious drug habit or addiction (see chapter 3). The prevalence of other recreational drug use (including the regular use of cannabis, amphetamines, tranquillizers etc) and alcohol misuse was fairly evenly distributed across the spectrum of violent and other serious index offences (violence scales I-VI). Although the relationship between substance misuse and juvenile crime is complex and causation is not fully established, studies of temporal ordering have found that the onset of antisocial behaviour generally precedes alcohol or drug misuse (Loeber, 1990 cited in Bailey and Marshall, 2004: 170). In addition, Bailey and Marshall (2004) have also asserted that antisocial behaviour seems to predispose to illicit drug use, and drug misuse does increase the likelihood of criminality (ibid: 170). The findings from the present study also indicate that in relation to vulnerable young people, substance misuse may be closely associated with an escalation in offending behaviour – and its severity.

### **Previous deliberate self-harm *before* entry into custody**

In the present study 6% of the total sample disclosed a history of repeat deliberate self-harm during childhood and adolescence (*before* entering custody). Within this

sub-population, the young female respondents - although small in number - are prominently featured. Two of the five girls reported a history of self-harm compared to 6 out of 137 young males. Irrespective of gender, previous episodes of deliberate self-harm had included self-poisoning (overdose) as well as other self-inflicted injury - most typically involving cuts and lacerations to arms and other areas of the body. Interviews and observations revealed the qualitative nature of past injuries: one young male respondent rolled up his sleeves and revealed very heavily and severely scarred arms with multiple and deep cut marks. A young female respondent had small cuts and scars to her face, neck, hands and arms.

The high rate of previous self-harm for the female offenders in this study is *one* of the key indicators in the matrix for measuring vulnerability, and in determining that young females in prison are amongst the most vulnerable and damaged young people in society. In addition, for the young males in this study, it seems reasonable to suggest that there may have been certain difficulties in disclosing previous self-harm, particularly within the prison environment, and this is likely to have resulted in an under-representation of the true incidence of their self-harm. This is supported by contemporary adolescent deliberate self-harm studies which have revealed that while the precise prevalence of self-harm in young people is very difficult to determine, there are indications that the figures are significant, and that self-harm in young people, and particularly in young females, is not uncommon (Storey et. al., 2005). From a survey of English secondary school pupils aged 15 and 16, it was found that 6.9% of the sample had reported an act of deliberate self-harm in the preceding year, with a life-time prevalence in excess of 13% (Hawton et. al., 2002: 1207-11). In addition, it is firmly established that young people with a history of conduct disorder, delinquent behaviour and aggression have a considerably higher risk of deliberate self-harm compared to the general adolescent population (See Fox and Hawton, 2002). The factors that are known to predispose young people to the risk of deliberate self-harm - impulsivity, anger and hostility, depression, substance misuse, conduct disorder, family conflict and disturbed family relationships - are also prevalent in the backgrounds of male and female juveniles convicted of violent and other serious offences.

Liebling's study of suicide and self-injury amongst young offenders in prison (1992), indicates that previous self-injury (before the custodial sentence) is a significant feature in the backgrounds of young male and young female prisoners. Her research shows that in a comparison group of 50 young male prisoners who had *not* deliberately injured themselves in prison, almost one-third (30%) had a history of previous self-injury. In contrast, amongst the 50 young males who *had* attempted suicide/deliberately injured themselves in prison, the majority (76%) had a history of previous self-harm (Liebling, 1992: 136-7). These findings are highly significant in two ways: (i) they reveal the extent to which young people in custody are likely to have a history of self-harm and, (ii) they show that attempted suicide/self-harm in custody most typically occurs in young people with a history of self-injury pre-dating the custodial experience.

From a much broader perspective, observations from the present study suggest that there is a distinct population of serious juvenile offenders for whom there is a 'continuum of harm' incorporating; (i) harm to the self *by* others + (ii) physical harm to the self + (iii) harm *to* others. In 7 of the cases that are featured in this study (5%), young people reported a history of repeat deliberate self-harm before entry into custody, a major drug addiction or major problems with alcohol misuse, and experiences of loss and abuse during childhood. In addition, their index offences were all located at the very serious end of the spectrum including violent offences against the person, or offences that involved street robbery and threats of violence with a weapon. While this sub-sample is very small and the figures are not statistically significant, the findings do illuminate the experiences of a continuum of harm that shape the lives of certain serious and violent juvenile offenders. In addition, although the data pertaining to *deliberate* self-harm is either absent or not applicable in the majority of cases, the research findings show that a large proportion of the offenders in this study had nonetheless been exposed to a tripartite experience of harm with the substitution of serious substance misuse. The degree to which young offenders engage in harmful behaviours to the self (either deliberately or recklessly/unknowingly) is likely to be a reflection of their often traumatic childhoods and deeply unhappy lives.



### **Serious juvenile offenders and mental health problems/disorders**

The criminological and psychiatric literature indicates that there is increasing evidence of high rates of mental ill-health, illness and disorder within populations of persistent and serious juvenile offenders (Bailey, 2000; 2003; 2006; Social Exclusion Unit, 2002; Harrington et al., 2005). More generally, 'estimates suggest that as many as a third to two-thirds of young offenders in the youth justice system have mental health needs' (Hagell, 2004, cited in Bailey, 2006: 32). Attention has been drawn by Bailey (2000) to a UK psychiatric screening of 10-17 year olds attending a city centre youth court. In this sample, high levels of both psychiatric and physical morbidity were found, including learning difficulties, mood disorder, epilepsy, alcohol and drug misuse, and mental illness (Bailey, 2000: 93). Young offenders have been found to have high levels of need in a number of areas including mental health (Harrington et al., 2005: 5). From a national cross-sectional study of 301 offenders (half in custody and half in the community), it was found that 31% of the sample had clearly identifiable mental health problems (Harrington et al., 2005: 6). This study also found that while the difference in the number of needs according to gender or ethnicity was not statistically significant: overall, female offenders tended to have more mental health needs than males. In addition, young offenders from ethnic minorities were found to have higher rates of post-traumatic stress (ibid: 6).

Research has also highlighted the prevalence of mental health problems in samples of young people placed in secure child-care and penal establishments (Social Exclusion Unit, 2002; Harrington et al., 2005; see also chapter 6 of the present study). In particular, it is reported that a significant proportion of young people in custody will have a history of depression, self-harm and suicidal behaviour (Social Exclusion Unit, 2002). It is also reported that 'a proportion of children and young people who commit the most serious violent and sexual offences will be exhibiting early signs of [antisocial] personality disorder' (Bailey, 2006: 34). From the Oxford Textbook of Psychiatry (1989) and in accordance with correct psychiatric classification (ICD-10), the term antisocial or dissocial personality is also interchangeable with psychopathic personality disorder (p127-128; see also Gregory, 2004: 717). Susan Bailey, an eminent child psychiatrist and leading researcher in this field, has reported that the identification of psychopathy in children and young people is still in its infancy, and

that it is currently premature to assign this label to younger cohorts. Instead, such juveniles are referred to as having 'psychopathic characteristics'. Correspondingly, as with adult psychopathy, these young people are likely to have a history of aggression, neurocognitive deficits and substance misuse (Bailey, 2006: 36-7). Other defining features include a degree of callousness that allows the person to inflict cruel, painful or degrading acts on others; impulsivity and a lack of guilt or remorse for the harm caused to others (Gelder et al., 1989: 135-136). The research cited, therefore, not only illuminates the incidence of mental health problems in the general population of juvenile offenders in custody, but they also isolate the potentially very complex mental health needs of certain juveniles convicted of the most serious crimes.

While findings from the present study have illuminated the prevalence of substance misuse and histories of self-harm, the extent to which the respondents had experienced other clearly identifiable mental health disorders/problems during adolescence could not be reliably measured, although issues relating to mental ill-health did emerge when examining their custodial experiences. It is clear from other research findings that significant numbers are likely to have multiple and complex mental health needs (see chapter 6).

### **Antisocial peers and delinquent peer groups**

From the criminological literature, one of the most consistent research findings is the strong correlation between youth offending and association with antisocial and delinquent peers (Thornberry, 1998: 162; Seydlitz and Jenkins, 1998: 64-65; Frank, 2001; Smith et al., 2001 cited in Van Dorn, 2004: 43). Additionally, association with delinquent peer groups or networks is one of the predictors of serious and violent youth offending (Frank, 2001). Research conducted by Flood-Page and others (2000) found that males with friends who had committed criminal offences or who had been in trouble with the police were over three-times as likely to be involved in offending themselves. The relationship between females' offending and that of their friends was even more striking, with a six-fold increase in the likelihood of own offending (Flood-Page et al., 2000; cited in Van Dorn, 2004: 43-44). It is also recognized that friendship networks and antisocial influences conveyed by them do have an impact on the spread of criminal behaviour. Research confirms that having antisocial peers also has

implications for joint participation in crime and the structure of co-offending youth networks (Frank, 2001). It has been suggested that:

The effect of delinquent friends on offending behaviour is enhanced if adolescents are attached to these friends, spend much time with these friends, feel that these friends approve of delinquency, and perceive pressure from these friends to engage in delinquent or offending behaviour.

Agnew (1991) cited in Seydlitz and Jenkins, 1998: 65

In cohorts of younger aggressive children, Lösel and Bender have observed that such children are ‘often rejected by their more normal age-mates and, partially as a consequence of this rejection and partially due to other factors, these deviant children frequently join delinquent peer groups’ (Lösel and Bender, 2006: 52). Others have also identified that certain young people who have difficulties in making friends and experience peer rejection are vulnerable to forming associations with antisocial peers (Bailey, 2000: 99). In addition, some young people may be propelled towards associations with delinquent peers by virtue of a range of social, psychological and environmental factors. It is recognized that young people are more likely to form friendships with other adolescents from similar social backgrounds and environments, with certain shared experiences or interests, and other common bonds or ties (Sanders, 2005). A large majority of the respondents in the present study (80%) reported associations with delinquent friends, and only 1 in 5 of the total sample said that their friends had not been involved in offending behaviour. In addition, of those who did have delinquent friends, three-quarters (75%) had committed repeat offences with them, while the remainder (25%) indicated that they had not done so, largely as a result of a weak attachment to these friends and/or being on the fringes of a delinquent peer group (see Table 4.8a).

**Table 4.8a Associations with delinquent peers**

<b>Delinquent and Antisocial Peers</b>	<b>Violence Scale I-III (n=85)</b>	<b>Violence Scale IV-VI (n=55)</b>	<b>Totals (n=140)</b>
Association with delinquent peers	64 (75%)	48 (87%)	112 (80%)
Association with a street gang	14 (16%)	7 (13%)	21 (15%)
Repeat offending with peers (Self-reported)	46 (54%)	38 (69%)	84 (60%)

NB: Differences between the two groups are not statistically significant

Table 4.8a shows the extent to which associations with delinquent peers and repeat offending with them are applied to the respondents convicted of a violent index offence (violence scale I-III) and those convicted of other serious crimes (IV-VI). Although the figures were not found to be statistically significant, a larger proportion of the respondents convicted of offences in which there was no use of actual physical harm (IV-VI) reported associations with delinquent peers *and* repeat offending with them, compared to the respondents convicted of violent offences against the person and other crimes involving elements of violence (I-III). Further analysis shows that for respondents convicted of drugs offences, street robbery and aggravated burglary/burglary, association with delinquent peers was particularly prevalent. In contrast, a lower proportion of the respondents convicted of sexual offences reported having delinquent friends (see Table 4.8b).

**Table 4.8b Index offence categories and associations with delinquent peers**

<b>Principal Index Offences</b>	<b>Delinquent Peers</b>
<i>Violence against the Person</i>	23 (70%)
<i>Sexual Offences</i>	6 (46%)
<i>Commercial Robbery</i>	28 (74%)
<i>Street Robbery</i>	36 (95%)
<i>Aggravated Burglary/Burglary</i>	13 (93%)
<i>Drugs Offences</i>	4 (100%)

From the sub-sample of respondents with delinquent peers, a minority had reported having just 1 or 2 delinquent friends, while the majority had associations with delinquent peer groups consisting of between 3 and up to 8 friends. These groupings

were mostly unstructured, informal, and consisted of young people ‘hanging around’ with others of a similar age, and sometimes committing crimes together (see also Sanders, 2005: 166). However, a distinctive minority (19% of those with delinquent peers) had reported associations with a street gang, consisting of larger groups of delinquent peers and young adult offenders. The figures indicate that 15% of the respondents identified themselves as being members of a street gang. From this finding, the incidence of specifically defined gang membership in the present sample was not found to be particularly prevalent. This study, therefore, illuminates the prevalence of informal delinquent peer groups, and indicates that gang membership is less common. From the criminological literature, however, there are substantive theoretical issues relating to the definitions of youth gangs and the study of gang-related youth street crime (see Pople and Smith, 2010: 68-69). In addition, the complexities in defining gangs are particularly exposed within the context of distinguishing youth street gangs from other delinquent youth groups or networks. The present study has attempted to identify certain characteristics that distinguish the gang member respondents from the non-gang member sample. Firstly, the study considers the literature.

### **Youth gangs and other delinquent peer groups: An overview of the literature**

The picture relating to youth gang membership in the UK is complicated by both theoretical and definitional issues as well as the media representation of gang-related youth crime and police estimates of gang activity in particular geographical areas. These features are also coupled with a lack of reliable data concerning gangs and gang-related crime trends over time (Pople and Smith, 2010: 68, 69-70). As a result, the extent to which youth street gangs and gang-related youth street crime and violence, in the UK, are becoming an increasing social problem cannot be reliably determined (ibid: 70). Moreover, while there has been a more concerted focus on gang research in the UK since the mid 2000s (see Pitts, 2008), this has not always been the case (Van Dorn, 2004; Wahab, 2004; Muncie, 2004; Bennett and Holloway, 2004). Historically, within the UK literature, substantive and influential cultural studies of British youth have focused on the emergence and development of youth subcultures and corresponding lifestyles as opposed to gangs *per se* (see Hall and Jefferson, 1976; Hebdige, 1979).

In sharp contrast, the prevalence and proliferation of American youth street gangs is reflected in extensive US criminological research that dates back to the work of Thrasher (1927) and the classic study of 1,313 gangs in Chicago (cited in Thornberry, 1998: 147). The pervading image of the American youth street gang is characterized by structure, leadership and hierarchy, identifiable symbols and signs, territoriality, and inter-gang violence including juvenile homicide (Sanders, 1994). This image based on traditional gang structures has dominated perceptions of youth street gangs, and it has provided a template from which the existence of youth street gangs (universally) has been measured. An alternative view from contemporary US gang research, however, has established that most street gangs are loosely structured with only moderate levels of organization, having ill-defined and changing leadership, and versatile patterns of delinquent and criminal offending (Klein, 2001: 10; Decker, 2001; see also Decker and Weerman, 2005). It is also broadly recognized that there are multiple typologies of gangs, and for street gangs in particular, studies have found wide variations in terms of size, age-range and ethnicity, and criminal activity (Mares, 2001; Decker and Weerman, 2005).

From within the UK, research conducted by Downes in the 1960s found no evidence of structured gangs in the east end of London (Downes, 1966). Almost 4 decades later, Sanders also found no evidence of structured US-style youth street gangs in the London Borough of Lambeth (Sanders, 2005: 153, 166). Rather, both studies highlighted the prevalence of informal (and unstructured) delinquent youth groups or networks. In addition, there is also some evidence that the newer forms of unstructured street gangs are characterized by a wide range of delinquent and offending behaviour, including violence, and comprise a broader age-range of gang members including children as young as 10 (Mares, 2001). From the small-scale ethnographic studies of street gangs in South Manchester conducted by Mares in 2001, it was found that alongside young adult gang members, there were also children and young people involved in a broad range of gang-related criminality (Mares, 2001: 15). Other research provides some evidence that gang behaviours and criminal activity have become more focused and violent, with children joining gangs at earlier ages (Van Dorn, 2004: 39). There are also indications that youth gun crime, although atypical and unusual, is strongly linked to a youth street gang culture and gang or gang-like behaviour (Wahab, 2004).

The present research shows that the respondents who had identified themselves as being members of a 'street gang' were typically involved in a broad range of delinquent and offending behaviour, including stealing cars, selling drugs, theft, robbery and violence. In addition, while the possession of weapons was prevalent across the sample as a whole, access to, or possession of a firearm was strongly linked to gang membership. Although the number of respondents attached to local street gangs was relatively small (n=21), several of these respondents also indicated that the age range of gang members had included children as young as 11, as well as younger and older teenagers and young adults. From the interview data there was also some evidence that within the context of the gang structures there were certain hierarchical roles based on age and criminal experience. For example, some respondents reported that younger gang members tended to be involved in selling small quantities of drugs, usually to other young people. In addition, gradations in the seriousness of gang-related offending are likely to reflect the age-range of gang members. Most of the gang members in the present study had joined a street gang at the age of 14, 15 or 16 years. For this sample, therefore, joining a gang below the age of 14 was atypical and unusual.

#### **Other characteristics of the gang-member respondents: A comparative view**

From the sub-sample of respondents (n=21) who reported that they had been members of local street gangs in the period leading up to the index offence, all were male and a large majority (16/21) were from black and other minority ethnic backgrounds. A comparative analysis of the gang and non-gang member respondents reveals some interesting differences and although the findings are not statistically significant, they are nonetheless revealing. With regard to drug use, over half (57%) of the sample of gang members had smoked cannabis either daily or on most days prior to imprisonment, compared to just over one-third (34%) of non-gang members (39/116). For more serious drug misuse/addiction, a reverse pattern was found to be present. Only 1 in 4 (24%) gang members had a serious drug problem that involved the regular misuse of Class A drugs including heroin and (more commonly) crack-cocaine. In comparison, as many as one-third (33%) of the rest of the sample had reported having a serious drug problem/ addiction to Class A drugs before entry into custody. These findings indicate that for the respondents belonging to a street gang there was a lower

incidence of serious drug misuse/ addiction compared to the rest of the sample, and a higher incidence of recreational cannabis use daily, or on most days. The empirical data also show that from the sample of gang members, a large majority (86%) were found to have a history of persistent offending (self-reports and case records) compared to just over half (55%) of the non-gang member sample. The comparative figures for violent offending are even more striking in that a large majority (86%) of the gang member respondents reported previous violent offending prior to the commission of the index offence, compared to just under two-fifths (38%) of the rest of the sample.

The findings show that most of the respondents who had belonged to a street gang did have a history of serious, violent and persistent offending. For the rest of the sample, a majority had no previous history of violent juvenile offending prior to the commission of the index offence(s). Other figures, however, indicate that in addition to most of the gang-members, a small majority of the non-gang respondents had a history of persistent offending during adolescence. It is also interesting to note that in relation to the number of previous convictions, there were no differences between the gang members and the rest of the sample. The figures show that 45% of the gang members and 47% of the rest of the sample had 3 or more previous convictions.

Overall, findings from the present study indicate that while the incidence of gang membership for this sample was low, most of the young gang members had a history of serious and violent juvenile offending. In addition, there are indications that for certain children and young people who do join street gangs, the seriousness of offending is likely to increase with age *if* they become strongly enmeshed in a street gang culture. The case of one young male respondent in the present study, although atypical of the sample but not unique, illuminates a personal journey from selling drugs (at a very young age) to forming a strong attachment to a street gang and drugs culture. The following extract includes comments obtained from the pre-sentence report (PSR) and other information contained within the young person's prison file.

[He] started dealing in Cannabis at the age of 9 years, and escalated to selling quantities of crack cocaine and heroin prior to custody. He was actively involved in a full spectrum of serious offences including the possession of firearms, and he has intimated that on release he will continue to carry a weapon for his own protection due to the culture that exists in his home area. It all began when he was approached by different men asking him to deliver drugs



for them. He refused to do this on several occasions and was physically assaulted as a result. Eventually he became afraid to refuse and he started to sell drugs in the local area. His mother believes that problems began after she separated from her husband and moved to another area of the city, where there were numerous social problems including gangs and young people openly dealing in drugs. His mother was very concerned about her sons becoming involved with local youths and drugs and requested a move away from the area. Eventually the family was moved to homeless families accommodation in a different area, but by this time [this young person] had become heavily involved in selling drugs with other young people. It was at this point that his mother felt that she had lost control over her son, and that his behaviour was governed by his peers rather than by his family. He stopped attending secondary school at the age of 13 and at the age of 14 he witnessed the tragic death of a close friend as a result of a gang-related street shooting incident.

This case also illustrates a concerned mother who was very worried about her son becoming involved with the 'wrong crowd'. Other findings from the literature and the present study also indicate that youth street gangs and other delinquent peer groups or networks are more commonly (although not exclusively) concentrated in large metropolitan and urban inner-city areas with high levels of social deprivation and youth unemployment (Mares, 2001; Sanders, 2005). The development of youth street gangs and other delinquent peer groups has been linked to increasing social inequalities, a perceived lack of opportunities, social exclusion, and youth alienation. It has been suggested that 'within a gang culture, alienated youth try to gain self-esteem, financial gain and power' (Gillig and Cingel, 2004: 220). In addition, other research has suggested that gang membership can contribute to identity and a sense of belonging for some adolescents, particularly young males (Reiboldt, 2001; cited in Gillig and Cingel, 2004: 220). Similarly, from experiences of working with severely disadvantaged children and young people, Camilla Batmanghelidj, the Director of Kids Company has observed that:

Members of teen gangs do not have any supportive adults in their lives, fail at school, and feel on the outside of society ... gang membership provides these young people with a sense of belonging.

Cited in Wahab, 2004

The research findings from the present study highlight certain distinctions between the respondents attached to youth street gangs and the rest of the sample, particularly in relation to previous serious and violent offending, and the possession of firearms. The comparative study of youth street gangs has also exposed certain other characteristics that resonate with the sample as a whole. For example, a majority of the respondents

in this study were from largely urban and working class communities based in socially deprived areas. In addition, the experiences of social exclusion and youth alienation are likely to be applicable (in varying or different degrees) to young people who commit very serious crimes. Most specifically, however, it also seems reasonable to suggest that for young people from black and other minority ethnic backgrounds, experiences of immigration and racism or discrimination (as previously indicated) may also engender a deeper and real sense of exclusion and alienation from the wider society.

### **Circumstances at the time of the index offences**

In addition to the detailed analysis of the background characteristics and life experiences of the present sample, the research sheds light on other circumstances prevailing during the period leading up to the commission of the index offences. Firstly, the study examines the individual living arrangements of each respondent at the time of the index offence(s). From this data, other issues such as the deterioration in familial relations and a lack of parental care and support are discernible. Secondly, the research reveals the extent to which the respondents were not attending school or were unemployed during the period leading up to the commission of the index offences. These findings show that in many cases, adolescent social lives appeared to be unstructured and/or characterized by a distinct absence of constructive and purposeful daily activities (see Table 4.9).

**Table 4.9 Living arrangements, attending school and employment**

<b>Living Arrangements at the time of the Index Offence:</b>	
Mother, Father, Siblings	14 (10%)
Mother, Step-Father, Siblings	13 (9%)
Mother / Mother and Siblings	54 (39%)
Father / Father and Siblings	8 (6%)
Grandmother or Other Relatives	11 (8%)
Local Authority Care/ Children's Home or Foster Care	13 (9%)
Living independently alone or with girlfriend/boyfriend/other friends	12 (9%)
Homeless/ No Fixed Abode/ Hostel	13 (9%)
<b>TOTALS</b>	<b>138</b>
<b>School, Employment, Training at the time of the Index Offence:</b>	
Under 16 and attending school	19 (14%)
Under 16 and excluded from school or truanting from school	39 (28%)
Attending a FE College as a Full-time or Part-time Student	9 (6%)
Participating in a Youth Training Scheme	2 (1%)
In Employment/ Full-time work/ Casual work	10 (7%)
*Unemployed	60 (43%)
<b>TOTALS</b>	<b>139</b>

The percentage calculations are based on 138 and 139 cases respectively. The percentage figures have been rounded to the nearest whole numbers.

\*This figure includes 4 young males just under the age of 16

The main findings show that almost half of all the respondents (45%) were living in single-parent households at the time of the commission of the index offence. Additionally, in a majority of these cases, a father or father-figure was absent from the daily routine of family life. Only 1 in 5 respondents had been living in a household with two parents, and in half of these cases (13/27) the family unit had included a step-father. From the interview data, it was evident that, irrespective of the gender of the respondents, relationships with step-parents were a particular and major source of conflict and tension. Although the role of the mother as a consistent care-provider is evident, the figures also show that just over 1 in 3 respondents (36%) had not been living with either of their parents at the time of the commission of the index offence. This sub-group comprises a minority (8% of the total sample) who had been living with other close family members (grandmother, aunt, older sibling). However, just over one-quarter of the total sample (28%) were not living with any of their

immediate or extended family members at the time of the index offence. This latter finding illuminates the extent to which respondents had committed the index offence, during a period in which they were separated from the care and control of their parents and families, either as a result of being in the care system or leaving home.

At the time of the index offence, almost 1 in 10 respondents (9%) were in the care of the local authority, living in either a children's home or with a foster family. This finding may not only signify experiences of serious behavioural and/or family difficulties, but also highlights the cases in which being in the care system had directly coincided with the commission of a violent or other serious juvenile crime. In addition, almost 1 in 10 respondents (9%) reported being homeless/of no fixed abode or were residing in a temporary hostel. This finding is also likely to be indicative of severe family dysfunction and/or breakdown. In effect, these particular respondents were, at a tender age, essentially having to fend for themselves with very little or no adult support. Additionally, a further 9% of the sample reported that, at the time of the index offence, they had been living independently in their own accommodation either alone (most typically) or with a girlfriend, boyfriend, or other friends. This sub-group includes young people who were recent care-leavers and those who had experienced periods of homelessness. These respondents typically reported that the council accommodation provided for them had been located in socially deprived areas with high rates of drug misuse and crime. From this finding, high levels of vulnerability are further revealed. It should, however, also be noted that the living arrangements of many other respondents (n=62) in the period before the commission of the index offence were unstable. Respondents described spending varying periods living at home with their mothers, then their fathers and/or other relatives as well as staying with friends. The levels of disruption in the living arrangements for the present sample were, overall, very striking. It is estimated that only 1 in 10 respondents had what could be described as a stable nuclear family.

Table 4.9 also reveals the extent to which young people in the present study had been both engaged with, and disengaged from, a world of education, employment and training. The cumulative figures show that only one-quarter to one-third of the sample (29%) were either attending school/college or were in employment/training at the time of the index offence. From this sub-group (n=40), a greater proportion, representing

20% of the total sample were either attending school or a college. These respondents appeared to be fully engaged in their education and their studies were going well. From this perspective, in isolation, the commission of a serious crime could be viewed as an unexpected or unusual event. Fewer than 1 in 10 respondents (9%) were in employment or training at the time of the index offence. For those in work (10 young males), the jobs that they were doing were typically temporary or casual, unskilled and low paid. There was little, if any, job satisfaction. From an examination of the sample as a whole, the cumulative figures show that a large majority (71%) of the respondents, including all five young females, were either not attending school or were out of work at the time of the index offence. These young people were essentially disengaged from a routine of constructive daily activities. Days were long and there was very little to do – except ‘hang around’ with friends and other associates. Such circumstances and conditions may have also contributed to feelings of isolation, boredom and self-worthlessness. All of these experiences in the young, may not only contribute to pre-existing layers of risk but may also act as a catalyst for the commission of serious crimes in populations of vulnerable and/or challenging young people. Within this context, it is broadly recognized that education and youth employment are critical features in protecting young people from criminal activities.

### **A summary of the research findings**

Findings from the present study reveal the extent to which a sample of violent and other very serious juvenile offenders had experienced difficult and/or traumatic childhoods and problematic or chaotic adolescent lives. An overwhelming majority of the respondents in this study had experienced separation from significant others including, most notably, fathers and other father-figures. In relation to other experiences of loss, some respondents had experienced the death of a parent and/or another very close relative. The findings also reveal a high incidence of intra-familial/parental conflict and violence. A sizeable proportion of the respondents had witnessed domestic violence and/or had been the victims of childhood neglect, cruelty and abuse. The experiences of harsh and humiliating physical punishment and abuse are particularly noteworthy. It was not uncommon for respondents to have criminal family members including, most specifically, parents and/or siblings. Additionally, many of the respondents had very poor experiences of school life, with high rates of

exclusion, persistent non-attendance and low levels of educational attainment and achievement. In adolescence, associations with a delinquent peer group were particularly prevalent and high levels of co-offending were identified. Together with others, their involvement in criminality had extended beyond their youthful and tender years. A large proportion of the respondents had a history of serious substance misuse, with other harmful behaviours to the self also being reported. The cumulative effects of the experiences revealed are likely to have contributed to feelings of powerlessness, fear, anger, sadness and sorrow.

The following case study collated from interview data and official records (the pre-sentence report) illustrates the experiences of '*Christopher*' who committed the index offence at the age of 17:

Christopher's natural mother was aged 15 at the time of his birth and his natural father was a known offender. Following early social services involvement with the family, Christopher was subsequently placed in the care of the local authority, and at the age of 1 year he was placed with a foster family. This proved to be an enduring and successful long-term foster placement, and when Christopher was 12 years old, his foster parents formally adopted him. At the age of 13, his adoptive mother died. It was in the immediate period following the death of his adoptive mother that Christopher's behaviour became more problematic at home and his main offending began. He was spending more time away from home and engaging with others in a range of antisocial and offending behaviour. During this period, there was a significant deterioration in Christopher's relationship with his adoptive father. Consequently, at the age of 14, he was placed in the care of the local authority and accommodated in a children's home until the age of 16. Whilst in the care system, Christopher continued to engage in delinquent and offending behaviour both on his own and with other young people. He was aged 14 at the time of his first conviction for offences involving theft, criminal damage and burglary. By the age of 16, his offending had escalated to include robbery and the possession of an offensive weapon. It was recorded that most of his criminal convictions were related to his increasing misuse of alcohol and drugs combined with solvent abuse, and had arisen from a chaotic lifestyle since the death of his adoptive mother and the breakdown of relations with his adoptive family. At the time of the index offences, Christopher (aged 17) was living alone in council accommodation, he was unemployed and he had serious problems with alcohol and drug misuse. During his imprisonment, Christopher was able to re-establish contact with his adoptive family.

This case study reveals the very sad history of a young man and his pathway leading to the commission of a very serious crime. Although unique from an individual perspective, such experiences are not atypical in samples of young people serving long custodial sentences. The influences which lead young people to commit very

serious offences are linked to a myriad of inter-related bio-psychosocial characteristics and risk factors (Lösel and Bender, 2006: 62). While there are shared characteristics, it is the variable interplay of individual experiences that may propel some young people to commit very serious crimes. Furthermore, while the causes of serious juvenile crime are complex and multifarious, the treatment of juveniles convicted of violent and other very serious crimes must, by necessity, be both individualized and holistic (see chapter 6).

## CHAPTER 5

### The Legal Process from Remand to Sentencing

Leading on from the analysis of offence and offender characteristics, this chapter focuses on the legal process and the terms of detention imposed. Experiences of a remand to custody and sentencing at the crown court are described and evaluated. In addition and centrally, the study explores the relationship between the index offences, levels of offence-severity and the terms of detention applied to individual cases. This analysis aims to facilitate a broader understanding of the correlation between the index offences and the sentences imposed. Differential treatment and outcomes for the respondents from ethnic minority backgrounds are discussed. The study also examines the submission of pleas before conviction and the incidence of appeals against the lengths of detention imposed. Based on interview data and information obtained from individual inmate prison files, it includes written comments made by judges during the sentencing process. As a result, the research provides some insight into judicial decision-making and the use of long-term detention in individual cases. The last section of this chapter considers the powers of the higher courts to remove juvenile offender-anonymity in certain cases which are deemed to be in the ‘public interest’. The cumulative empirical findings are evaluated within the broader contours of sentencing theory and contemporary criminal justice.

#### **Juveniles sentenced to long-term detention: A separate system of justice**

There is a separate process, outside of the mainstream youth justice system, for children and young people who commit ‘grave’ crimes and for whom it is considered that sentences of long-term detention would be appropriate. Such sentences can only be imposed on conviction, on indictment at the crown court. As a result, these juvenile offenders are exposed to a legal process that is more commonly reserved for adults. The sentence is not available to the youth court and, therefore, the distinct and separate system for dealing with criminal cases involving children and young people (under 18) excludes those for whom a sentence of long-term detention is an option. The youth court, however, has the discretionary power (except in cases of murder and



manslaughter) to decide whether to commit a juvenile charged with a grave or very serious crime to the crown court. If an eligible offence appears to merit a greater penalty than is available under youth court powers (a custodial sentence above 24 months), the youth court will then refer the case to the crown court. The special provisions for dealing with this category of serious juvenile offenders have been the subject of legal scrutiny and criminological debate. There are concerns that very youthful and other vulnerable adolescent offenders may lack the ability to participate effectively in the trial process and a cogent argument has been made that the crown court is an inappropriate venue for the trials of children (Arthur, 2010: 127; Graham, 2010: 133; Smith, 2010: 392). In addition, it is recognized that the potentially lengthy process from arrest to sentencing at the crown court is acutely detrimental to young people and the system of justice (see NACRO, 2002: 21-2). In the light of these substantive issues, the first part of this chapter examines the treatment of the respondents at the pre-conviction stage of the legal process.

### **The use of remand and bail**

Whenever a case is adjourned, a youth court will consider whether or not to remand the defendant. There is a presumption in favour of bail unless the severity of the offence and/or other offender characteristics precludes this course of action. The use of a secure remand for juvenile offenders is essentially underpinned by two main legal criteria; (i) the nature and seriousness of the offence and (ii) the necessity for such a remand. In relation to meeting the first criterion, a child or young person must be charged with (or convicted of):

- ❖ A violent or sexual offence (Part I of the Criminal Justice Act 1991).
- ❖ An offence punishable in the case of an adult with 14 years imprisonment or more.
- ❖ Or where the offender has a recent history of absconding while remanded to local authority accommodation and is charged with an imprisonable offence committed while on remand to the aforesaid accommodation (section 23(5) of the Children and Young Persons Act 1969).

With regard to the ‘*necessity for such a remand*’ criterion, the court must be satisfied that only such a remand is adequate to protect the public from serious harm<sup>28</sup>. There are also other circumstances in which a child or adolescent offender can be remanded to a *secure* provision where it is deemed that alternative forms of non-secure accommodation are inappropriate. Such circumstances are confined to children and young people who are likely to abscond from a non-secure remand placement and be at risk of significant harm, or are likely to cause harm and injury either to themselves or others within a non-secure setting<sup>29</sup>. Bail may also be refused in cases where the offender is at risk of committing further offences; where the court is satisfied that the defendant should be kept in custody for his or her own protection or where there are welfare issues concerning a child or adolescent offender<sup>30</sup>. In all cases, the court must have regard to the welfare of the young person for whom a remand is being considered (CYPA 1933, s.44).

Three-quarters of the respondents in the present study had been placed on remand before conviction. While remands to prison custody were particularly prevalent, the empirical data also reveal the extent to which respondents were remanded to local authority accommodation as well as those who were granted bail (see Table 5.1).

**Table 5.1 Remand placements and bail**

REMANDS PRIOR TO CONVICTION	NUMBERS %	REMAND PLACEMENTS AND BAIL LIVING ARRANGEMENTS
Remanded to Local Authority Accommodation	<b>33</b> (23%)	Local Authority Children’s Home (Open) <b>(9)</b> Local Authority Secure Accommodation <b>(21)</b> Specialist Remand Foster Parents <b>(3)</b>
Remanded to Prison Custody	<b>72</b> (51%)	YOI/with Juvenile Remand Wing <b>(48)</b> HMP/with Juvenile Remand Wing <b>(24)</b>
Granted Bail (with conditions) prior to Conviction	<b>37</b> (26%)	On Bail – Living with a parent and siblings <b>(31)</b> On Bail – Living with other relatives <b>(5)</b> Staying at a supported bail hostel <b>(1)</b>
TOTALS	<b>142</b>	<b>142 (100%)</b>

<sup>28</sup> s. 23 of the CYPA 1969 as amended by s. 98 of the Crime and Disorder Act 1998 and schedule 7, paragraph 39 to the Criminal Justice and Court Services Act 2000.

<sup>29</sup> Children (Secure Accommodation) Regulations 1991, regulation 6(2).

<sup>30</sup> Schedule 1, Part II, paragraph 3 of the Bail Act 1976.

NB: The figures represent the main placement during the period leading up to conviction. It should be noted that a small minority of respondents had experienced both bail and remand including a combination of different types of remand accommodation.

During the period before conviction, half of the sample (51%) had been remanded to custody at a prison service establishment. From this sub-sample (n=72), two-thirds were remanded to a young offender institution (YOI), and the remainder to a juvenile remand wing within a local adult prison. It is from both these particular sub-groups of respondents that the experiences of a remand were the most difficult, harrowing and in certain cases traumatic. As an alternative to a custodial remand, almost one-quarter of the total sample (23%) had been remanded to a local authority provision and from this population the majority (64%) had been placed in secure accommodation. This type of secure provision, while encapsulating the contradictory aims of care and confinement (see Harris and Timms, 1993: 4) incorporates a therapeutic and child-centred approach to the care of vulnerable children and young people (including those remanded and sentenced by the courts). The cumulative figures from the research show that in total, two-thirds of the respondents (65%) had experienced a secure remand, before conviction, although the experiences of these respondents had been shaped by very contrasting systems and regimes (see further comments below). With regard to the use of non-secure remand provisions, a minority of respondents (8%) had been remanded to either a local authority children's home (with open conditions) or had been placed with specialist remand foster parents.

The remaining sub-group, representing 1 in 4 respondents, had been granted bail (with conditions) during the period leading up to conviction. These respondents (n=37) had been charged with, and subsequently convicted of, a wide range of offences (from violence against the person and street robbery to burglary and certain drugs offences) which could be located at varying points along the 'offence-seriousness' spectrum. In considering the background characteristics of these offenders it was found that most had either experienced a comparatively stable family life or had close family ties and support. A large majority (84%) of these young people continued living at home with (more commonly) one biological parent throughout the period of bail. In other cases (13%), respondents had been living with other close relatives, while one young female (estranged from her adoptive family) had been living at a bail hostel prior to the conviction. As would be expected, a larger proportion of the respondents granted bail

(62%) had no previous criminal convictions, compared to the respondents remanded to local authority accommodation (33%) and those remanded to prison custody (15%). It is perhaps worth noting that while some respondents did admit to committing minor offences whilst on bail, this did not appear to be typical.

The overall findings from this part of the research reveal wide variations in the treatment of respondents with regard to the use of remand and bail. It would appear that even in very serious cases issues relating to previous criminal history and family stability are likely to influence decisions about whether or not to remand a young person to custody. While it is broadly acknowledged that the juvenile remand population comprises some of the most socially disadvantaged and/or isolated young people, it also follows that severe family dysfunction and separation may act to restrict or limit the use of bail in certain cases.

### *Secure remand provisions and issues of age, gender and vulnerability*

In cases where bail is refused, and the court is of the opinion that a child or young person requires a secure remand, the provisions available vary in accordance with certain key criteria including age, gender and the vulnerability of the offender. Secure remand placements for boys age 10-14 and girls aged 10-16 are restricted to either local authority secure accommodation or a secure training centre (STC)<sup>31</sup>. Young males aged 15-16 can be remanded to either local authority secure accommodation or a secure training centre and prison custody at a young offender institution (see Appendix B). Most usually, however, young males in this age-group are remanded to prison custody, although there is a ‘vulnerability’ test which aims to restrict this practice. If, therefore, the court considers that prison custody is undesirable on the grounds that a young person is immature and vulnerable (physically/emotionally) or has a history of self-harm, then the young person will be remanded to other secure accommodation *if* such provisions are available. The law, however, also provides that in the absence of alternative secure accommodation, vulnerable 15 and 16-year old males, who meet the criteria for a secure remand, will be remanded to prison

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<sup>31</sup> The use of secure training centres for remanded juveniles (under 17) represents an expansion in the availability of alternative (non-penal) secure remand provisions. Secure training centres were not in operation at the time of the present fieldwork study. The Youth Justice Board has overall responsibility for the placement of children and young people (under 18) requiring a secure remand.

custody<sup>32</sup>. Historically the severe lack of secure provisions outside of the prison system has resulted in some of the most vulnerable 15 and 16-year old males being remanded to prison. Young offenders (males and females) aged 17 can only be remanded to prison custody, although in exceptional cases, a local authority can apply to hold a young person of this age in a secure children's home<sup>33</sup> (see Appendix B).

The present study found that prison custody was used more frequently than other secure provisions for defendants aged 15 and above (see Table 5.2).

**Table 5.2 Remand placements and age**

<i>Age at commission of offence</i>	<i>LA Accommodation</i>	<i>Remand to Prison Custody</i>	<i>(Granted Bail)</i>
13	1	N/A	-
14	14	* 3	(4)
15	13	14	(16)
16	5	37	(13)
17	-	18	(4)
<b>TOTALS</b>	<b>33</b>	<b>72</b>	<b>(37)</b>

\* This figure represents 3 respondents who had committed the index offences at the age of 14 and just before their 15<sup>th</sup> birthday. At the time of the remand they had just reached the age of 15 - the minimum age for a remand to prison custody.

A majority of the respondents remanded to prison custody (76%) were aged between 16 and 17 at the start of the remand period, while just under one-quarter (24%) were aged 15 – the youngest age at which a young person can be remanded to a prison service establishment. All together, over half (56%) of the remanded 15-year olds and over four-fifths (88%) of the 16-year olds had been remanded to prison custody, as well as all of those aged 17. At the other end of the age-range spectrum, all of the remanded respondents aged between 13 and 14 had been placed in local authority accommodation. The cumulative figures show that just over two-fifths (43%) of the

<sup>32</sup> s.98 of the Crime and Disorder Act 1998.

<sup>33</sup> s.25 of the Children Act 1989; see also further information on court ordered secure remands and remands to prison custody published by the Youth Justice Board (2011) and available at : [www.justice.gov.uk/about/yjb/custody/custodial remand](http://www.justice.gov.uk/about/yjb/custody/custodial%20remand).

remanded 15-year olds and only 12% of the 16-year olds had been remanded to a provision outside of the prison system. This latter finding reveals the extent to which certain respondents were identified, by the courts, as *particularly* vulnerable and for whom a remand to prison custody was deemed to be inappropriate. From the previous analysis of offender background characteristics, however, there is no evidence to suggest that those remanded to prison custody were *less* vulnerable (see chapter 4). The lack of alternative (non-penal) secure remand provisions, at that time, may have been a critical factor in determining the remand placements that were made.

With specific reference to the female respondents in this study (n=5), none had been remanded to prison custody. Three girls aged 14, 15 and 16 had been remanded to either local authority accommodation or an alternative remand placement (2 had been placed in secure accommodation and 1 had been placed with remand foster parents). The two other female respondents, aged 16 and 17, had been granted bail.

### ***Remands and ethnicity***

When the use of remand and remand placements were analyzed in conjunction with the ethnicity of the respondents, marked differences in the treatment of those from an ethnic minority background emerged. Most strikingly, remands to prison custody were found to be particularly prevalent for young black males (see Table 5.3).

**Table 5.3 Remands and different ethnic groups**

<b>Ethnicity</b>	<b>Local Authority Accommodation</b>	<b>Remand to Prison Custody</b>	<b>Granted Bail</b>	<b>Totals</b>
White UK	23 (28%)	*34 (42%)	24 (30%)	<b>** 81</b>
Black	6 (15%)	*28 (68%)	7 (17%)	<b>41</b>
Mixed Parentage	3 (27%)	7 (64%)	1 (9%)	<b>11</b>
Asian/Other ***	1 (11%)	3 (33%)	5 (55%)	<b>9</b>
<i>Totals</i>	<b>33</b>	<b>72</b>	<b>37</b>	<b>142</b>

\* Black v White  $\chi^2=12.62$ , 1df,  $p<0.05$  – p-value after adjusting for age, offence-severity and previous appearances at the crown court.

\*\* Includes 5 female respondents; 3 female respondents had been remanded to the care of a local authority; and 2 had been granted bail.

\*\*\* Other includes young people from South America and the Philippines.

The main findings show that a greater proportion of young males from black (68%) and mixed-parentage (64%) backgrounds had been remanded to prison custody before conviction, compared to the white respondents (42%) and those from an Asian or other minority ethnic background (33%). Similarly, large-scale quantitative studies have identified a disproportionate use of secure remands (including remands to prison custody) for young black males and those from a mixed-parentage background (Feilzer and Hood, 2004: 78-80). Figures from the present study also confirm that a lower proportion of young black male respondents (15%) had been remanded to local authority accommodation compared to almost equal proportions of respondents from the other ethnic groups (25% to 28%). In addition, a lower proportion of young males from a black (17%) and mixed-parentage (9%) background had been granted bail, compared to the white respondents (30%) and those from an Asian or other minority ethnic background (55%). The overall findings from this research, therefore, reveal that young black males are over-represented in the samples of juvenile offenders remanded to prison custody, and under-represented in the sub-sample of respondents remanded to local authority secure accommodation or granted bail. Importantly, these ethnic differences remained consistent after other variables were controlled.

Ethnic differences in the use of custodial remands became even more striking when viewed in association with the age of the respondents and key offence characteristics. Almost half (48%) of the 15-year old male respondents from a minority ethnic background had been remanded to prison custody, compared to just under one-fifth (19%) of the white respondents. Most strikingly, almost three-fifths (57%) of 15-year old black male respondents had been remanded to prison custody. These findings demonstrate the extent to which young black males (most specifically) are over-represented in this population of the youngest respondents remanded to prison custody. Other findings also show that amongst 16-year olds, an overwhelming majority (91%) of males from a minority ethnic background had been remanded to prison custody, compared to just over half (55%) of the males from a white background. Once again, the differences were most marked for black respondents of whom 87% had been remanded to prison custody. These findings, in conjunction with

the previous figures, show that in cases where the courts had a choice of remand placements, the use of remands to prison custody was found to be particularly prevalent for 15-16 year old male respondents from minority ethnic groups and especially those from a black ethnic background. Any notions that these latter groups are *less vulnerable* than their white counterparts cannot be substantiated, although evidence from the present study relating to family breakdown, school exclusion, social isolation and discrimination (cited above, see chapter 4) may suggest that a reverse supposition could be more appropriate.

All decisions concerning the remand of a young person before conviction are based upon a multiple range of factors relating to both offence and offender characteristics. It is beyond the remit of this research to systematically analyze all the factors that may have contributed to the use of prison remands for each of the ethnic groups. The present study, however, has attempted to explore the range of index offences – and the constituent of violence – to see whether this can help to explain the greater use of custodial remands for ethnic minorities. Interestingly, the data did not support this hypothesis and in fact disclosed a reverse picture, whereby black offenders were less likely to be convicted of a serious violent or sexual offence. One-third of the white 15-year old males had been charged with (and subsequently convicted of) a violent offence against the person (wounding with intent) or sexual violence (rape), compared to 14% of the 15-year old males from black and other minority ethnic backgrounds. Similarly a slightly larger proportion of the white 16-year old males (41%) had been charged with a seriously violent offence against the person, compared to those from a black or other minority ethnic background (32%). From the comparative figures, there appears to be no identifiable correlation between the disproportionate use of prison remands for the 15 and 16-year old male respondents from a minority ethnic background and the incidence of serious violent offences against the person.

From a broader analysis of all the index offences (including robbery, aggravated burglary, criminal damage) and the use of violence (violence scale I-V), the findings reveal a greater parity between the white respondents and those from a minority ethnic background (see Table 5.4).



**Table 5.4 Age, ethnic group and the use of violence (Violence Scale I-VI)**

Age and Ethnicity	Violence Scale I-VI			TOTALS
	I-III	VI-V	VI	
<b>Males aged 15 and 16</b>				
White UK	33 (63%)	15 (29%)	4 (8%)	52
Black and other minority ethnic background*	26 (60%)	11 (26%)	6 (14%)	43
<i>Totals</i>	<b>59</b>	<b>26</b>	<b>10</b>	<b>95</b>

\*These figures include 30 young Black males and 13 respondents from other minority ethnic backgrounds.

Findings from the empirical data reveal that very similar proportions of white males aged 15 and 16 (63%) and those from a predominantly black or other minority ethnic background (60%) had been charged with (and subsequently convicted of) offences which had involved the use of violence with or without weapons (scale I-III). There were no differences in the incidence of index offences involving either inter-personal violence (scale I-III) or serious threats of harm (scale IV-V) across the different ethnic groups. Furthermore the use of a weapon to threaten serious harm (scale IV) was found to be fairly evenly distributed across the sample of white males aged 15 and 16 (23%) and the respondents from a black minority ethnic background (19%). There were, however, differences in the types of weapons used to threaten harm. In particular, the use of a firearm (most commonly an imitation gun), although unusual, was found to be more prevalent in the respondents from a black and mixed parentage background.

The main findings from this part of the research demonstrate the disproportionate use of prison remands for the 15 and 16 year old respondents from a black minority ethnic background, which cannot be explained by the type or nature of their index offence alone. While the findings may allude to a process of discrimination, the issues raised in this research are very complex, and the picture presented from the empirical data is far from complete. Other information relating to previous serious offending and appearances at the crown court is considered below (p195).

## **Individual and collective experiences of a secure remand**

From the sample of respondents who had experienced a remand to either local authority accommodation or prison custody (n=102), a majority (75%) had been held on remand for between 3 and 6 months and almost 1 in 4 (23%) had been on remand for between 7 and up to 12 months prior to conviction<sup>34</sup>. As previously indicated, an overwhelming majority (89%) of the respondents placed on remand were remanded to a secure provision, and from this population (n=93), over three-quarters (77%) were remanded to prison custody.

### ***Experiences of a prison remand***

The experiences of being on remand in the prison system were described in the words of many respondents, as ‘*very difficult*’ and were characterized by common feelings of loneliness, isolation and despair. For many of the young respondents this was their first experience of being ‘locked-up’ in a prison and completely separated from family and friends. Some of the respondents had also reported a fearfulness of prison life combined with feelings of anxiety and an acute sense of hopelessness for the future. In addition to the incidence of psychological and emotional stress and distress, the respondents remanded to prison custody had experienced what was at the time of this research, an impoverished regime defined by a lack of purposeful activity and inadequate levels of care and support. With specific reference to the availability of educational provisions, respondents aged 15 at the time of the remand were required to attend full-time (daily) education. In most cases, however, aspects of learning were confined to basic literacy and numeracy skills. For the respondents aged 16 and 17 at the time of the remand, access to education and learning was generally limited, erratic and inconsistent. As a consequence, most of the respondents in this age group reported having little access to education whilst on remand. More typically, the remand period had been spent engaged in menial work, including working in the laundry, cleaning a prison wing or serving meals to inmates. Some of the respondents, however, had been unemployed for most of the remand period and, as a consequence, had spent long periods during the daytime hours alone and in their cells.

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<sup>34</sup> The average (mean) period of remand was 6.7 months, with a median period of 4 months.

The comments from one young person remanded to a YOI for a period of 8 months illustrate an experience of loneliness, isolation and despair found to be common amongst other respondents in prison for the first time.

It was the first time I had been away from my family [grandmother] ... not knowing anyone and having no friends ... I cried for the first two months and stayed in my cell, reading and staring out of the window.

Young male remanded in prison custody at the age of 16

The comments from another young respondent represent (in an under-stated way) a typical response and a shared experience of being on remand in a YOI.

It weren't that good at first, but once I got to know everything ... at first I were getting nicked all the time and getting days added on to my sentence all the time ...but once I was there for a bit, it weren't that bad. There were others in there that I knew, but I was one of the youngest in there, everyone else was a couple of years older than me. It were pretty hard though, yeah, it were pretty hard.

Young male remanded in prison custody for 6 months at the age of 15

Certain respondents had experienced significant physical and/or psychological trauma during the period of remand to prison custody. For some, the first few days of being on remand had been characterized by a withdrawal from Class A drugs, mainly heroin and crack-cocaine. During this time the respondents had typically remained in their cells, unable to eat or sleep, experiencing severe pain. In effect, the physical and psychological pains attributable to drug-withdrawal had been experienced alone and with very little support. Medical supervision and intervention had been uncommon and the respondents had indicated that the prison wing staff had been generally unsympathetic, unsupportive, and uncaring. At the time of the present study, there appeared to be no formal protocol or guidelines for the care of young people experiencing drug-withdrawal in custody<sup>35</sup>.

From an examination of medical and psychological reports contained within individual prison files, it was found that 12 respondents had experienced an episode of

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<sup>35</sup> It should, however, be noted that subsequent to this research, formal procedures underpinned by evidence-based best practice, have been established for the care of all remanded and sentenced prisoners experiencing drug-withdrawal symptoms.

very serious and (potentially) life-threatening deliberate self-harm during the period of remand in prison. This sub-sample includes a distinct group of young respondents who had not only thought about suicide (suicidal ideation) but had also attempted suicide either - and most commonly- by hanging or cutting their wrists. In most of these cases, the suicide attempt/ serious self-injury had occurred during a remand before conviction, although a small number had been recorded for the period following conviction and before sentencing. From the cumulative figures, therefore, the whole suicide attempt/serious self-injury population represents approximately 1 in 6 (17%) of the respondents remanded to prison custody *before* conviction and 1 in 12 (8%) of the total sample (all of who had been remanded following conviction). These particular findings strongly illuminate the prevalence of extreme vulnerability attributable to this sample of juvenile offenders remanded to prison custody and the extent to which certain respondents had experienced feelings of deep anguish, hopelessness and despair.

The extent to which other respondents had engaged in non-life threatening deliberate self-harm whilst on remand could not be reliably determined from prison records or interview data. Some respondents did allude to personal experiences of reported and unreported episodes of punching cell walls, swallowing objects and deliberate self-inflicted laceration. It is established that parasuicidal behaviour and self-harm are prevalent in remand and sentenced adult and young prisoner populations (Ministry of Justice, 2010, cited in Prison Reform Trust, July 2010: 32, 34, 39). In addition, prison suicide and self-harm research has identified that the risk of suicide is greater in the remand population, and that young offenders are significantly over-represented in terms of suicide attempts and self-injury in custody (Liebling, 1992: 68, 72; Ministry of Justice, 2010). The present study also illuminates the incidence of very serious self-injury/attempted suicide in a population of remanded juvenile prisoners facing potentially long custodial sentences. It is, however, also interesting to note that some of the respondents in the present study alluded to the shame and stigma attached to self-harming behaviour within the young prisoner culture. This feature (which may not necessarily be confined to young prisoners) may contribute to under-reporting and therefore, measurements of incidence are likely to be under-representative.

From other data deriving from individual prison files, it was found that 17 respondents had experienced serious bullying, intimidation and/or assault from other inmates whilst on remand at a prison service establishment. This figure represents almost 1 in 4 (24%) of the respondents remanded to prison custody before conviction and one-eighth (12%) of the total sample. These findings reveal a sizeable sub-group of respondents on remand who had been exposed to serious victimization and harm from other young prisoners. The full extent to which other respondents had experienced bullying, intimidation and/or assault during a remand to custody could not be reliably determined. It is, however, established that such experiences are common amongst young people in prison (Challen and Walton, 2004; see also chapter 6 of the present study) and assaults classified as ‘serious’ are particularly prevalent (The Prison Reform Trust, May 2007: 21). From a study of 1,222 sentenced juveniles detained in young offender institutions, it was found that just under one-quarter of the sample (24%) had reported being hit, kicked, or assaulted by other young people while in custody (Challen and Walton, 2004: 9). It is broadly recognized that being a victim of prison bullying, intimidation and harm considerably adds to the pressures experienced by young people throughout a period of imprisonment (see chapter 6). In addition, young people who are seriously bullied and/or are victims of assault (by other inmates) in prison may be at greater risk of self-harm and conversely, engaging in self-harm may lead to (further) victimization.

RB had been remanded to prison custody for a period of 5 months. Whilst on remand he had been identified as a ‘vulnerable young prisoner’ and at-risk of being threatened by other young inmates. As a result of this RB was placed in segregation for his own protection under the prison rule 43/YOI rule 46. During the remand period RB had attempted suicide by trying to hang himself in his cell. It had also been recorded that other inmates had believed that RB had committed a sexual offence, although this was not the case. He remained in segregation for most of the remand period, having little contact with other inmates and receiving no visits from his family or friends.

Information constructed from notes contained within the respondent’s prison file

Another young respondent describes some of his experiences of being on remand:

It was really hard you know, really bad, I felt scared and alone. I was anxious and depressed, I wanted to kill myself. They moved me onto the hospital wing for a bit and I felt okay there, but then they had to move me back onto the wing and it [the bullying] started up again.

In two other cases, prison officers reported that:

He is finding it emotionally difficult being at [the prison] particularly given his past history and the pressure he has had to handle from other inmates.

He has been subjected to bullying, threats and intimidation... He is known to harm himself and he has cut his wrists on several occasions.

Comments obtained from individual inmate prison files

In another case a young respondent (RC) had been remanded to local authority secure accommodation for a period of 3 months. Following his conviction for robbery he was remanded to a young offender institution before sentencing. From his prison file it was recorded that:

[RC] is not coping with prison life, he is feeling very low and he has threatened to harm himself' ... It was also reported that RC had experienced threats and intimidation from a particular group of inmates from the London area, and as a result of this RC had been transferred to another wing of the prison. During this period the prison staff had observed that RC had been harming himself and he was found to have self-inflicted superficial cuts to his right arm. One night he was found with a noose around his neck. Immediately following this incident he was transferred to the hospital wing. Although there were no further threats of suicide, other episodes of deliberate self-harm had been recorded during the period before sentencing.

A quotation and other information obtained from the respondent's prison file

The findings from this part of the research bring into sharp focus the experiences of respondents during a remand to prison custody. While the study has highlighted certain difficult and traumatic experiences, it is also broadly recognized that individual experiences are shaped by a range of inter-personal factors, combined with other features relating to the prison environment and prison life, including the regime and relationships with staff and other young prisoners. Individual and collective experiences of a secure remand also reflect the type of secure provision as well as the variations between different prison service establishments. In addition to the exploration of the experiences of those respondents remanded to prison custody, the study has also sought to provide a brief overview of the contrasting experiences of respondents who had been remanded to local authority secure accommodation. Integral to this latter provision is a child-centred and therapeutic ethos, as opposed to the more punitive principles upon which custodial regimes are based.

### *Local authority secure accommodation*

As previously indicated (see Table 5.1 above) from the sample of respondents remanded to a secure provision (n=93), between one-fifth and one-quarter (23%) had experienced a remand to local authority secure accommodation. This sub-sample of respondents (n=21) had access to full-time education and a range of subjects taught at varying levels to accommodate individual needs. All had participated in some form of education and most had gained at least one certificate of achievement during the period of remand. The regime had also provided a wide range of recreational activities including indoor and outdoor sports. Some respondents had demonstrated an interest in the creative arts and particular sports, including football and basketball. In addition to the highly structured daily activities, a number of respondents had participated in group-based work addressing issues such as drug and alcohol misuse, offending behaviour and past life-events. All of these respondents had access to individualized psychological and emotional support administered via a key-worker system, and the services of other specialist professionals. Most had formed very good relationships with their key-workers and other members of staff. The regime had also placed an emphasis upon the importance of family contact, and the respondents had been strongly encouraged to forge and maintain links with their families and friends through regular phone-calls, letters and visits. Certain respondents, however, had very limited contact with their immediate families and received very few visits during the period of remand.

RD had been remanded to prison custody. At the start of the remand he had experienced drug withdrawal from heroin (to which he had been addicted). He described this period as 'hell'. RD had also experienced repeated bullying from other remanded youths and he had been subjected to repeated threats of violence. He spent one month at this particular prison establishment before being transferred to a local authority secure unit. Whilst at the unit RD had access to full-time education and he performed well in a number of subjects. He had also expressed an interest in art and various sports. During this period of remand RD had also participated in offence-related work, which had included issues around his drug addiction and offending behaviour. From this work RD had expressed remorse for his crimes.

Information constructed from reports contained within the respondent's prison file

The empirical data also indicate that in contrast to the respondents remanded to prison custody, none of those remanded to local authority secure accommodation had attempted suicide and only 1 respondent had engaged in self-harm. In addition,

although episodes of bullying had taken place, none of these respondents appeared to have experienced serious victimization or assault during their period on remand. At the core of a secure remand, however, is the experience of being ‘locked-up’ and ‘locked away’ in an unfamiliar environment. Most of the respondents had experienced difficulties in adjusting to life in secure accommodation. For many, the most difficult aspect was being completely separated from family and friends, and the loss of freedom. Although most did settle into the regime, their thoughts were often focused on life outside of the locked doors. A remand to a secure provision is, therefore, always likely to incorporate particular difficulties for juvenile offenders, irrespective of where they are accommodated. Nonetheless, within the context of security, welfare and safety, the cumulative findings from this research confirm that small secure children’s homes with child-centred and therapeutic regimes provide a safer and more supportive environment for juveniles requiring a secure remand<sup>36</sup>.

### **The submission of pleas and proceedings at the crown court**

As discussed in chapter 2, only the crown court has the power to detain children and young people (aged 10-17) to long periods of detention. As a result, following on from a period of remand or bail, the first appearance at the crown court involves the submission of pleas and the receiving of directions from the court (a ‘pleas and directions’ hearing), generally within 28 days of committal (NACRO, 2002: 21). Depending on the plea, the case will be adjourned for either sentencing or trial. Three out of ten respondents in this study (29%) had pleaded not guilty to the index offence(s) during a first hearing at the crown court and this group (n=41) typically experienced a prolonged period of adjournment (on remand or bail), culminating in a trial by jury. These particular respondents had, therefore, been exposed to the full rigors of the adversarial process conducted within a higher (crown) court system that is primarily concerned with the criminal prosecution of serious adult offenders. Those that went to trial included an equal proportion of white UK respondents (28%) and those from black and other minority ethnic backgrounds (29%). All except one were young males and just under half (49%) were aged between 14 and 15.

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<sup>36</sup> The Youth Justice Board is committed to reducing the numbers of males aged 15 and 16 remanded to custody at a young offender institution. Specialist remand professionals attached to local youth offending teams now provide a system of continuing care and support for juveniles during a remand to prison custody. This service was not available at the time of the present fieldwork study.



A majority (70%) of the respondents, however, had pleaded guilty to the index offence(s) during a first hearing at the crown court. From this sub-sample, it was evident that some respondents had admitted guilt during the early stages of the legal process and had fully co-operated with the Police, while for others an intention to plead not guilty had been reversed by the time of, or during, proceedings at the crown court. Following conviction, all of these respondents had been remanded to a secure provision, in most cases a prison service establishment, while awaiting sentencing. From a legal-philosophical perspective, the admission of guilt is imbued with notions of taking individual responsibility and showing remorsefulness (von Hirsch, 1998b: 169-170). It has also long been a principle of sentencing that a guilty plea will normally entitle the defendant to a 'discounted' sentence (Ball et al., 2001: 142). Rather than an aspect of mitigation, however, the reduction principle derives from the need for an effective administration of justice (Sentencing Guidelines Council, 2007: 4). A guilty plea avoids the need for a trial, saves considerable time and costs, and spares victims from the ordeal of attending court and giving evidence (ibid: 4). From a broader perspective, however, a preparedness to accept responsibility for a serious crime could be an important first step towards contrition and reform. Other findings from the empirical data show that an equal proportion of the white respondents (70%) and those from black and other minority ethnic backgrounds (70%) had pleaded guilty to the index offence(s). In addition, with specific reference to the five female respondents, four had admitted their guilt at the earliest stages of the legal process.

### **Previous appearances at the crown court**

A large majority (78%) of the respondents in this study, including all five females, had never been a defendant at the crown court on any previous occasions. However, 1 in 5 (21%) did have a history of previous crown court appearances and, therefore, these particular respondents had some familiarity with the process and proceedings. Analysis of the empirical data revealed no differences between these two sub-groups in terms of their willingness to offer a guilty plea. In relation to ethnicity, however, differences were identified: almost one-third of the respondents from a minority ethnic background (31%) and 37% of young black males, had been tried at the crown court on at least one previous occasion, compared to 1 in 7 of those from a white UK background (14%). From a broader analysis of these findings and with specific

reference to the young black male respondents, it is suggested that in addition to the seriousness of the index offence, the higher prevalence of previous serious offences having been dealt with at the crown court, and the resultant *repeat* appearances at the crown court for serious crimes, may have been important factors within the context of a remand to prison custody. However, when these variables were controlled, the differences in the use of custodial remands for the young black male respondents remained statistically significant. Other studies have also identified a propensity for young males from black and other minority ethnic backgrounds to be committed to the crown court for sentencing (Feilzer and Hood, 2004: 118-119). This is likely to have an accumulative effect on both remands to custody and sentencing outcomes.

### **Young defendants at the crown court: collective and individual experiences**

As previously indicated, a significant minority of the respondents (41/142) had been tried and convicted by a jury. For this latter sub-group and for the sample as whole, a majority had never been tried at a crown court before. Most of the respondents who had been tried before a jury, and many of the other respondents, described the experience of appearing (as a defendant) at the crown court as:

*'hard', 'difficult', 'stressful', 'frightening', 'confusing', 'intimidating'.*

Respondents convicted under the age of 16, in particular, disclosed experiencing feelings of fearfulness, anxiety and intimidation. These emotional responses, while perhaps common in such circumstances, are likely to be particularly pertinent to the very young and the most vulnerable. The respondents who had experienced the public and open process of a trial by jury (n=41), had collectively expressed not only feelings of intimidation, but also a lack of understanding with regards to the trial process. This finding was consistent across the younger (14-15) and older (16-17) age-groups. Most of the youngest and over half of those aged 16-17 at the time, indicated that they had been unable to understand all of the language used within the courtroom, and this had resulted in some anxiety and confusion. Some also referred to an inability to concentrate on the court proceedings and/or to becoming bored and disinterested. From these findings, it could be inferred that a majority of the respondents (across the age-groups) had exhibited either an intended or unintended

disengagement from the trial process. From the literature, it is recognized that children and young people frequently lack the necessary skills and understanding to effect a meaningful participation in the trial process (see Cooper, 1997: 167-180). These issues bring into question the appropriateness of the crown court as a venue for the trials of children and young people.

The following comments represent common and shared experiences:

I was scared and frightened ... I didn't really understand what was going on.

It was boring and I just wasn't listening.

2 young males convicted separately of street robbery and both sentenced to 3 years detention

I didn't understand what was going on, and I couldn't understand some of what was being said. I felt confused by some of the words ... it was hard ... and having to face the victim and his family. I coped fairly well with the stress and pressure. My family and friends were at the court, and I felt sad ... I'd let everyone down.

Young male convicted of wounding with intent and sentenced to 4 years detention

The only thing that got me vexed was when you see the witnesses coming against you, they're like looking you over, like giving you dirty looks, like I'm scum compared to them. I felt angry when they kept saying you've done this and you've done that, it's hard when you're just sat there. I didn't like it when the prosecution kept trying to put words in my mouth... it was like I was starting to shout at him a bit. My family was backing me and like all my mates were there as well, that was like worse cos they were all sat there. I was expecting a big sentence. The judge was going on for ages about you're an evil young man, you're wicked ... I just thought just sentence me. Afterwards I went to the court cell, it was like a closed visit in a prison with a glass screen. It was one of the things that really stressed me out cos I'm the youngest in the family, and like my mum was crying, and I couldn't get to her to give her a hug.

Young male convicted of attempted murder and sentenced to 7 years detention

It was pretty hard stood up you know, with the public gallery and speaking up in front of them, and with loads of people there and that. That was pretty hard ... I kept slipping up on my words. I got confused and I felt scared ... scared of what was going to happen to me and that ... I knew if I got convicted that I was going to get a long sentence. I was expecting six years, and when I got four [years] I was a bit surprised really, I thought I'd get a lot more. I wasn't really listening to the judge, but in the newspaper I think it said something about they were very grave offences.

Young male convicted of robbery and sentenced to 4 years detention

From the cases cited, none of these five young males had any previous experience of being a defendant at the crown court and all had been tried by a jury. The following comments were made by a young male who had been a defendant at the crown court on at least one previous occasion:

I knew what to expect I'd been at the crown court before ...my barrister was good and he talked me through things. I still felt anxious though and I was stressed, the court was full of people and the public gallery and that ... it's hard in there you know and I was worried about things what I'd done and what was going to happen and I was all mixed up inside.

Young male convicted of street robbery and sentenced to 4 years detention

Although a majority of the respondents (61%) had appeared at the crown court with other co-defendants, this feature did nothing to reduce feelings of anxiety and stress. On the contrary there were, in certain cases, strained relationships between co-defendants that were manifested during the court proceedings and which appeared to persist after sentencing and during imprisonment.

### ***The trials of children and young people: Practice Directions***

Just after the fieldwork for this research had been completed the issue of how to conduct cases in the crown court involving young defendants was the subject of a Practice Direction, *Trial of Children and Young Persons in the Crown Court* issued by the Lord Chief Justice in 2001. This followed the decision of the European Court of Human Rights in the case of *V. v. United Kingdom* and *T. v. United Kingdom*<sup>37</sup>. The case in question involved two 10-year old boys tried and convicted at the crown court for the murder of James Bulger in 1993. The Practice Direction instructs that the crown court must take account of the welfare of the child or young person, and ensure that the trial process does not expose a young defendant to avoidable intimidation, humiliation or distress. In addition, all possible steps should be taken to assist a young defendant to understand and participate in the proceedings (see also Ball et al., 2001: 96; NACRO, 2002: 21). At a practical level, other key changes included allowing child defendants to sit with their families in a location that permits easy

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<sup>37</sup> *V v UK* and *T v UK* [2000] 30 EHRR 121; see also Arthur, 2010: 127.

communication with legal representatives. Judges should not wear their robes and wigs, and the trial timetable should take into account the potential inability for a young defendant to concentrate for long periods. In addition, while the crown court remains accessible to the public, the *Practice Direction* instructs that the numbers attending a trial should be limited. An up-dated version of these measures is contained within the *Consolidated Criminal Practice Direction 2007* (see Arthur, 2010: 124).

While these directions and changes are important, there are still concerns attributable to the extent to which young children and other vulnerable adolescents are able to participate effectively in the trial process, and the appropriateness of the crown court for the trials of children and young people. At the same time, access to full legal rights (including trial by jury) and the pursuance of justice for victims constitute core legal imperatives. There is, however, a continuing broad consensus that the crown court remains an inappropriate venue for the trials of young children and other vulnerable adolescents (NACRO, 2002: 22; see also Rob Allen, 12.10.07, BBC Radio 4 the Today news programme archive). As an alternative, the NACRO Committee on Children and Crime has recommended the creation of a specialist court which is presided over by a youth judge, and in which the process of trial by jury is maintained (NACRO, 2002: 35). Without major reform, however, it is suggested that the use of the higher criminal courts for the trial of young children and other vulnerable adolescents, is likely to be a persistent thorn in the side of contemporary criminal justice.

### **Sentencing theory and the use of juvenile long-term detention**

It is established that while long periods of detention can be awarded to juveniles in order to punish, deter and protect the public, the length of a sentence should nonetheless be proportionate to the gravity of the offence (Sentencing Guidelines Council, 2005). This conception of sentencing is strongly influenced by desert theory and the 'justice' model, from which it is advocated, that measures of punishment should, *on the grounds of justice*, be principally determined by the seriousness of the offence (Ashworth, 1998: 141; von Hirsch, 1998b: 169, 185). In addition, this criterion is also underpinned by the notion that those who commit crimes (including children and young people) deserve to be punished (Moore, 1998: 150). Within the

context of desert theory, therefore, the notion of criminal justice derives from - and is inextricably linked to - a conceptualization of punishment that is 'just, fair and deserved'. From another perspective, Nils Christie has appositely described a 'just deserts' approach to sentencing as a prescription for matching the gravity of a crime with a '*just measure of pain*' (Christie, 1994: 175).

A central tenet of desert theory is the principle of proportionality: the relative severity of a punishment should be proportionate to the relative seriousness of the offence. In addition, within this sentencing framework, it is also advocated that punishments should be consistent (treating like cases alike) and, therefore, offenders committing similar offences are to be punished equally (Scruton and Haydon, 2002: 311). This approach to sentencing may act to place limits on punishment in such a way as to minimize discretionary or potentially discriminatory decision-making. The role of the offender, meanwhile, is closely bound by the concepts of individual responsibility, rationality and the engagement of free will. Moreover, these particular concepts act to provide a justification for the punishment of offenders. The application of desert theory to the sentencing of young offenders illustrates that the 'justice' model – and its many constituent parts including the emphasis placed upon the due process of law and the protection of children's legal rights - has moved to the centre stage of contemporary youth justice policy (see Morris et al., 1980; Zedner, 1998: 169; Asquith, 2002: 276).

From desert theory and the justice model, the main focus of attention is concentrated on the offence and the determination of offence-seriousness. It is these particular elements that formulate the principal criteria from which the punishment and sentencing of offenders is based. Within this sentencing framework, the seriousness of a criminal offence (as previously indicated) not only depends on its degree of harmfulness (or potential harmfulness), but also on the degree to which an offender is deemed to be culpable for a particular criminal offence (see chapter 3). In relation to the first criterion, while specific categories of very serious offences against the person (murder and manslaughter) are uniquely identifiable in terms of their gravity, it is also broadly recognized that the quantification of harms is both a complex and changing enterprise (Ashworth, 1998a: 144). In addition, the concept of harm can be construed widely, to include harm to victims (physical and psychological), their families, the

local community and the wider society. The complexities surrounding the measurement of criminal harms may, therefore, have an impact on assessments of offence-seriousness and the construction of proportionate *and* consistent sentencing.

The measurement of individual offender-culpability – as a constituent of offence-seriousness – also provides a further complexity to the sentencing process. In particular, this criterion necessitates a strictly individualized calculation, as opposed to the collective measures of harm attached to specific categories of violent and very serious offences. Furthermore, the measurement of offender-culpability – and the contributory features of individual responsibility, rationality and free will, provides an additional dimension to the sentencing and treatment of child and adolescent offenders. Within this specific context, therefore, other factors, which may have a significant impact upon assessments of young offender culpability include: (i) conceptualizations of youthfulness (immaturity and vulnerability), (ii) the nature of juvenile offending (irrational and impulsive), and (iii) the background characteristics of children and young people who offend (including loss and abuse, alcohol and drug misuse, mental health problems). In addition, the degree to which a young person is deemed to be morally culpable for his or her own criminal actions constitutes an important part of the sentencing process. From a theoretical and philosophical perspective, the concept of moral culpability and the notion of fairness, also occupy central roles within the pursuance of justice. It has been observed that:

The justice of a sanction has to be determined in relation to the moral culpability of the offender and with reference to the treatment meted out to those who commit similar offences.

Asquith, 2002: 277

### ***Incapacitation and public protection***

Juveniles convicted of the most serious violent offences against the person can be awarded very long preventative sentences. Under the provisions of s.91 of the PCC(S) Act 2000, sentences of long-term detention can include a life sentence. In addition, following the implementation of the Criminal Justice Act 2003, other extended (determinate and indeterminate) sentences are available for ‘violent and dangerous’

offenders including those under the age of 18. From this latter area of the criminal law, an offender will be deemed to be dangerous if he or she is assessed (by the court) as posing a significant risk of serious harm to the public. Assessments of risk and issues of public protection have moved to the centre stage of contemporary sentencing policy (see chapter 2). Findings from the present study have revealed that very long custodial sentences for juvenile offenders are comparatively unusual (see below). However, the following case provides an illustration of one young male respondent in this study who had originally received an exceptionally long sentence of 20 years detention. He was sentenced in 1995 at the age of 14. The sentence was subsequently reduced to 9 years detention by the court of appeal.

AL was aged 13 when he committed a very serious and violent offence. The offence happened late one night after the young person had been invited into the house of an older adult female who was not known to him. It was stated that the female had tried to make sexual advances towards him, and during this time he attacked the victim with a hammer. The victim sustained multiple and very serious life-threatening injuries. The following day AL was arrested by the police and subsequently charged with the offence. He initially denied any involvement in the crime but later pleaded guilty to the offence. He was convicted, at the age of 14, of wounding with intent to cause grievous bodily harm and he received a sentence of 20 years detention. This term of detention, which was comparable to a life-sentence, was more than halved by the court of appeal. This young person had no previous criminal convictions.

In another case, a young male respondent had been convicted of the rape of an unknown adult female victim and sentenced to 12 years detention. These examples serve as a reminder that within the complexities of sentencing, and in certain cases, very long sentences are awarded to the youngest offenders who pose a substantial risk to the public.

### ***Deterrence and the principle of restraint***

Before and after the Criminal Justice Act 1991, several reported appeal cases have identified that the power to sentence a juvenile to long-term detention is wide enough to enable a court to pass a sentence for deterrent purposes. For example, in the case of *Ford*<sup>38</sup> [1976] which involved repeated street gang robbery of women in South London, the appeal court upheld a term of five years detention and rejected the defence submission that the provision should not be used for general deterrence. The

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<sup>38</sup> *Ford* [1976] 62 Cr. App. R. 303



court asserted that this was a local situation of the utmost gravity which could only be stopped if other youths and boys realized what action might be taken against them. The court, however, also re-iterated the need to balance deterrence against individual treatment for the rehabilitation of the young offender (see Ball et al., 2001: 447). *Ford* was cited with approval in the case of *O'Grady*<sup>39</sup> [2000]. Similar matters were also raised in the case of *Marriott and Shepherd*<sup>40</sup> [1995]. This offence had involved street robbery in which older, vulnerable victims had been targeted, and sentences of five years detention were awarded. The appeal court noted that:

It is not inappropriate to impose a deterrent sentence; there may be a very real need to deter others and indeed young others from offending in like manner. But when one is passing a deterrent sentence it is necessary to keep a balance between that aspect of the matter, the youth of the offender and the effect of a long sentence upon the perception of the offender, it being trite to observe that young offenders see time stretching ahead of them in a different way to that in which adults see it.

These comments and observations not only allude to issues of proportionality, but they also emphasis the principle of restraint as observed in the case of *Storey*<sup>41</sup> [1984]. In this latter case, the court of appeal ruled that a grave crime sentence should not be of such length that to the young person the far end of the sentence is out of sight. This principle is expressed in terms of affording '*light at the end of the tunnel*' (Ball et al., 2001: 447). A sentence of long-term detention, therefore, should normally be scaled down from the length of sentence appropriate for an older offender, to a level that reflects the youthfulness of the offender and their understanding of the passage of time. This, however, does not mean that the courts will necessarily pass a shorter sentence where the circumstances of the case merit a substantial period of detention. On the contrary, a survey of custodial sentences conducted by Ball and others (2001) illustrates the appeal court's willingness to endorse long terms of detention for very serious offences, particularly very serious inter-personal violence (p391-411). The principle of restraint, however, remains an important legal consideration in that it may act to restrict the use of very long terms of detention, in all but the most exceptional cases. In addition, the notion that a young person should be able to see the '*light at the end of the tunnel*', encapsulates feelings of hopefulness rather than despair. The

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<sup>39</sup> *O'Grady* [2000] 1 Cr. App. R. (S.) 112

<sup>40</sup> *Marriott and Shepherd* [1995] 16 Cr. App. R. (S.) 428

<sup>41</sup> *Storey* [1984] 6 Cr. App. R. (S.) 104

relevance of the court of appeal's mitigation for youthfulness was borne out by the perceptions of young people in this study <sup>42</sup>.

### **The age of criminal responsibility and the punishment of young offenders**

Within contemporary law and society, there is an increasing presumption that children and young people should be treated as responsible actors. This approach, which has formed a central position in political and popular discourse, is also enshrined in the legislative framework for the treatment of young offenders. In England and Wales, children from the age of 10 are presumed to be responsible for their criminal actions. This age of criminal responsibility is ranked amongst one of the lowest in Europe. A fundamental shift to the concept of age and criminal responsibility was established by the Crime and Disorder Act 1998. This Act abolished the presumption, created in common law, that children aged 10-13 were incapable of forming criminal intent (*doli incapax*) unless the court could prove otherwise (see chapter 2). The subsequent removal of this presumption has not only facilitated the absolute ascription of criminal responsibility to children from the age of 10 (NACRO, 2002: 30), but it has also become synonymous with the broader conceptualizations of modern childhood and the (re) criminalisation of very young offenders. It has been observed that:

The importance of the presumption [*doli incapax*] lay in its symbolism; it was a statement about the nature of childhood, the vulnerability of children and the appropriateness of criminal justice sanctions for children.

Gelsthorpe and Morris, 1999: 213

In addition, it is argued that the abolition of *doli incapax* signifies and demonstrates that the child has been 'responsibilized' in criminal law (Bandalli, 2000: 81-95). Furthermore, within the context of criminal behaviour and ordinary moral discourse, it has been suggested that whether or not the individual is seen as being responsible for his or her actions, is also crucial to questions about the legitimacy of punishment or blame (Asquith, 1983: 55).

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<sup>42</sup> A number of respondents reported that to a teenager, a sentence of 4, 5, 6 years stretches a long time into the future. These perceptions were coupled with the reality that for this population of young inmates, a large and significant part of their adolescence and young adulthood will be spent in prison.

Since the mid 1990s, changes in youth justice law and policy have been underpinned by the notion that children and young people deserve to be punished for their crimes. This framework for the treatment of young offenders also strongly reflects contemporary populist attitudes and a ‘populist-punitiveness’ (Bottoms, 1995) towards children and young people who offend. In addition, a modern conception of childhood encapsulates the often complex and contradictory roles of children in society (‘angels and devils’), although the general tenor is one of an increasing loss of innocence. This is coupled with the growing ‘demonisation’ of the young and the young offender (see Scraton, 1997; Zedner, 1998: 167), who are increasingly promoted as rational, calculating actors freely exercising their will to choose wrong-doing. These particular features, together with the observation that, sections of the public have become less willing to countenance sympathy for the offender have contributed towards the condemnation of young offenders and the increasing demands that they be punished. The notion that children and young people who offend are deserving of a separate system of care and treatment (based on strictly welfarist principles) has largely (although not exclusively) been replaced by a system of youth justice based on punishment and retribution. Moreover, the perception of young offenders as deliberate wrong-doers, together with the wider ascription of criminal responsibility and culpability (in law and society) to children and young people who offend, legitimates punishment - including the use of severe punishments - and this, in turn, has permeated contemporary youth sentencing policy.

### **Long-term detention sentences in practice**

The next part of the study examines individual sentences of long-term detention in tandem with categories of index offences and offence-severity. From this analysis issues of proportionality in sentencing together with the concepts of punishment, deterrence and public protection are further illuminated. The section begins with the age of the respondents at the time of the conviction<sup>43</sup> (see Table 5.5).

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<sup>43</sup> These findings complement the analysis of age at the commission of the index offence or offences as discussed in chapter 2.

**Table 5.5     Age at conviction**

<i>Age at Conviction ( years)</i>	<i>Number of Offenders % of Sample</i>
.....	.....
<b>14</b>	<b>5 (4%)</b>
<b>15</b>	<b>35 (25%)</b>
<b>16</b>	<b>46 (32%)</b>
<b>17</b>	<b>56 (39%)</b>
<i>Totals</i>	<i>142 (100%)</i>

Percentage figures have been rounded to the nearest whole numbers.

A majority of the respondents (72%) had been convicted at the upper-end of the eligible age-range for a sentence of long-term detention. The mean age at conviction was 16 years and 8 months, with a median age of 16 years<sup>44</sup>. However, a significant minority (28%) was convicted of the index offence(s) and sentenced to a longer period of detention while still under the official school-leaving age. The sample does not include any young people who were under the age of 14 at the time of this conviction. This latter finding reflects the comparative rarity in the use of long periods of detention for child offenders aged 10-13 years. Additionally, no interviews were conducted with those detained in local authority secure accommodation, all the respondents were, at the time of the interviews, in the YOI system.

### ***Terms of detention***

As previously indicated, under the provisions of s. 91 of the PCC(S) Act 2000, there is no statutory minimum period of detention and the maximum term can include a life sentence (see chapter 2). The law also provides that the length of sentence (which can be up to the adult maximum for the offence) shall not exceed the statutory maximum term of imprisonment available for an adult offender. From this sentencing framework, therefore, the periods in which a child or young person can be detained

<sup>44</sup> These figures reflect the periods of time spent on remand or bail. As a result, the age profiles at the time of the conviction differ slightly from the age of the respondents at the commission of the index offence (see chapter 3).

are considerably broad and variable. At one end of the scale is the young person sentenced to a period of detention, which is not substantially greater than the maximum alternative custodial provisions (a 2-year detention and training order), available for young offenders. At the other end of the scale is the young person convicted of a serious violent offence against the person, which is deemed to merit an exceptionally long period of detention. In addition, shorter periods of s. 91 detention (below 24 months) can be imposed in special circumstances where alternative custodial provisions are not available. The findings from this study confirm the considerable range and variations in the periods of detention awarded, and act as a further reminder of the heterogeneity of offences attracting a s.91 sentence, in terms of both the offence-type and the gradations of offence-seriousness (see Table 5.6).

**Table 5.6 Terms of detention with age at conviction**

Terms of Detention (years)	Age at Conviction (years)				Totals
	14	15	16	17	
<3	-	1	6	1	8 (6%)
3-4	1	23 (m) 1 (f)	26 (m) 1(f)	34 (m) 1 (f)	87 (61%)
>4-5	1	4	7	10	22 (15%)
6-7	2	5	4 (m) 2 (f)	8	21 (15%)
8-12	1	1	-	2	4 (3%)
<b>Totals</b>	<b>5 (4%)</b>	<b>35 (25%)</b>	<b>46 (32%)</b>	<b>56 (39%)</b>	<b>142</b>

The percentages in the end column have been rounded to the nearest whole numbers.

The figures represent original lengths of detention and are also inclusive of the very small number of sentences reduced by the court of appeal.

From a broad spectrum of sentences ranging from 18 months to 12 years, the average (mean) length of detention was 51.9 months with a median measurement of 48 months. The single most frequently occurring sentence (the mode) was four years detention, to which one-third of the sample had been sentenced. Overall, the majority (61%) had been convicted of offences that were deemed to merit a sentence of between three and four years detention. At the upper-end of the scale, one-third of the sample was sentenced to more than four years detention and almost 1 in 5 (18%) were awarded the longest sentences of between six and twelve years. The latter sub-group includes two young males originally sentenced to exceptionally long periods of detention (18 years and 20 years) but whose sentences had been reduced on appeal. At the lower end of the spectrum, only 6% of the respondents were serving a sentence of

less than three years and, as a result, this particular use of juvenile long-term detention for the present sample was atypical. Within the constructs of the s.91 sentence, these findings not only demonstrate considerable variation in the periods of detention awarded, but they also show that the longest sentences (to be featured in this study) were not prevalent and that the sentence tended to be applied to offenders deemed to deserve at least three and, more typically, four years detention.

In relation to terms of detention and ethnic diversity, the empirical data show some important differences. A higher proportion of the black respondents (80%) and those from a mixed-parentage background (73%) had been sentenced to at least four years detention, compared to the white respondents (60%) and the respondents from an Asian or other minority ethnic background (55%). In contrast, however, almost equal proportions of respondents from white (17%), black (17%), mixed-parentage (18%) and Asian or other minority ethnic background (22%) had been sentenced to the longest periods of detention, between six and twelve years. The ethnic differences in relation to sentences of at least four years detention did not persist when the longest terms of detention (6-12 years) were considered. With specific reference to the five female respondents, two had been sentenced to 3 years detention and three had received longer sentences of 4 years, 6 years and 6 and a half years detention.

***Terms of detention, index offences and measures of violence (scales I-VI)***

The following section incorporates a combined analysis of the lengths of detention, index offences and corresponding scales of violence (I-VI), and brings together the essential components from which individual terms of detention are primarily, but not exclusively, derived (see Tables 5.7a and 5.7b).

**Table 5.7a Index offences and terms of detention**

<b>Detention (Years)</b>	<b>Violence against the Person</b>	<b>Sexual Offences</b>	<b>Robbery Of Premises</b>	<b>Street Robbery</b>	<b>Burglary</b>	<b>Other Offences</b>	<b>Total</b>
<b>&lt;3</b>	*	*	<b>3 (8%)</b>	<b>2 (5%)</b>	<b>2 (14%)</b>	<b>1 (17%)</b>	<b>8 (6%)</b>
<b>3-4</b>	<b>19 (58%)</b>	<b>5 (38%)</b>	<b>27 (69%)</b>	<b>26 (70%)</b>	<b>8 (57%)</b>	<b>2 (33%)</b>	<b>87 (61%)</b>
<b>&gt;4-6</b>	<b>7 (21%)</b>	<b>3 (23%)</b>	<b>7 (18%)</b>	<b>9 (24%)</b>	<b>4 (29%)</b>	<b>3 (50%)</b>	<b>33 (23%)</b>
<b>&gt;6-12</b>	<b>7 (21%)</b>	<b>5 (38%)</b>	<b>2 (5%)</b>	*	*	*	<b>14 (10%)</b>
<b>Total</b>	<b>33</b>	<b>13</b>	<b>39</b>	<b>37</b>	<b>14</b>	<b>6</b>	<b>142</b>

**Table 5.7b Violence scale (I-VI) and terms of detention**

<b>Detention (Years)</b>	<b>I</b>	<b>II</b>	<b>III</b>	<b>IV</b>	<b>V</b>	<b>VI</b>	<b>Total</b>
<b>&lt;3</b>	*	*	<b>2 (25%)</b>	<b>3 (38%)</b>	<b>1 (13%)</b>	<b>2 (25%)</b>	<b>8 (6%)</b>
<b>3-4</b>	<b>23 (27%)</b>	<b>5 (6%)</b>	<b>22 (26%)</b>	<b>22 (26%)</b>	<b>5 (6%)</b>	<b>8 (9%)</b>	<b>*85 (61%)</b>
<b>&gt;4-6</b>	<b>7 (21%)</b>	<b>4 (12%)</b>	<b>9 (27%)</b>	<b>8 (24%)</b>	<b>3 (9%)</b>	<b>2 (6%)</b>	<b>33 (23%)</b>
<b>&gt;6-12</b>	<b>7 (50%)</b>	<b>4 (29%)</b>	<b>2 (14%)</b>	<b>1 (7%)</b>	*	*	<b>14 (10%)</b>
<b>Total</b>	<b>(37)</b>	<b>(13)</b>	<b>(35)</b>	<b>(34)</b>	<b>(9)</b>	<b>(12)</b>	<b>140</b>

NB: In contrast to Table 5.6, the periods of detention have been condensed to 4 groupings.

The percentage rates have been rounded to the nearest whole numbers.

\* The violence scales for 2 cases of commercial robbery (premises) are missing.

From the figures presented, it is not possible to assess the proportionality of sentences in individual cases. However, the findings do illuminate certain expected as well as unexpected outcomes. For example, half of those convicted of serious violence against the person including sexual offences (24/46) had been sentenced to between 3 and 4 years detention; and a total of three-fifths of these sentences (59%) were applied to a range of offences that had involved the use of violence with and without weapons (scale I-III). Other figures also show that a majority of the respondents convicted of commercial robbery (69%) and street robbery (70%) had been awarded sentences of between 3 and 4 years detention. These findings may be indicative of a threshold in the use of long-term detention which includes the majority of grave crimes but excludes those deemed to be of an *exceptionally* grave or very serious nature. Almost half of the respondents (48%) sentenced to over 4 years and up to 6 years detention,

had been convicted of robbery and almost one-third (30%) had been convicted of a very serious violent offence against the person (including rape). The figures include 1 in 4 of those convicted of street robbery. These findings show that robbery constitutes a greater proportion of the offences resulting in a sentence of more than 4 years detention. In addition to the prevalence of violence, the use of a firearm to threaten victims (while atypical) was a significant feature in the commercial robbery cases which attracted these longer sentences. Contrastingly, and in a minority of cases (5/33), sentences of more than 4 to 6 years were awarded to respondents convicted of burglary and other offences with relatively low violence ratings (scale V-VI).

As would be expected, the longest periods of detention (over 6 and up to 12 years) were reserved (except in 2 cases) for the most serious violent offences against the person including very serious sexual offences. The comparatively small sub-group of respondents (14/142) who received the longest sentences had, in most cases, been convicted of offences ranging from attempted murder, rape against an unknown female victim and very serious wounding resulting in life-threatening or very serious physical injury. In addition, the use of a weapon to either inflict very serious physical injury (scale I) or to threaten further serious harm (scale II) was particularly prevalent in these cases (see tables 5.7a and 5.7b). From this perspective alone, the conception of proportionality in sentencing is, perhaps, more clearly discernible. At the other end of the spectrum- as previously indicated- only 8 respondents (6% of the sample) had received a sentence of below 3 years for offences including robbery, burglary and drugs offences. Although the numbers are small, it is worth noting that some of these offences had involved either the use of violence (scale III) or threats of harm with a weapon (scale IV). In certain of these cases, the respondents had been identified as particularly vulnerable and/or criminally unsophisticated, and the length of sentence is likely to have reflected these issues. It is, however, also observed that this minority of cases could be located at the very margins of the grave crimes spectrum. At the time of the present study, the cumulative findings reveal that the use of long-term detention was typically reserved for offences that were deemed to merit at least three years custody. The longest periods of detention were reserved, almost exclusively, for the most serious violent crimes against the person. The most contentious issue might involve the use of sentences of more than 4 years for certain robbery and burglary offences characterized by varying degrees of harm. Overall, however, the findings do



not support the notion that ‘net-widening’ has resulted in the use of juvenile long-term detention for less serious offences.

A final complete overview of all the index offences, the use of violence (based on the violence scale I-VI) and the specified terms of detention are presented in the following table. This information provides a comprehensive picture of the empirical research findings (see Table 5.7c).

**Table 5.7c Index offences, violence scales (I-VI) and terms of detention**

Index Offence	Violence Scale I-VI						Totals
	I	II	III	IV	V	VI	
<b>Violence against the Person</b> (n=33)	● (13) ● (6) ● (7)	● (1)	● (5) ● (1)				● (19) ● (7) ● (7)
<b>Sexual Offences</b> (n=13)		● (1) ● (3)	● (4) ● (3) ● (2)				● (5) ● (3) ● (5)
<b>Commercial Robbery (Premises)</b> (n=39)*	● (4)	● (1) ● (1)	● (1) ● (5)	● (2) ● (11) ● (4) ● (1)	● (2) ● (2)	● (2) ● (1)	● (3) ● (25) ● (7) ● (2)
<b>Street Robbery</b> (n=37)	● (4) ● (1)	● (2) ● (2)	● (1) ● (7) ● (3)	● (10) ● (2)	● (1) ● (2) ● (1)	● (1)	● (2) ● (26) ● (9)
<b>Burglary</b> (n=14)	● (2)	● (2)	● (1) ● (1)	● (1) ● (1)	● (1)	● (1) ● (3) ● (1)	● (2) ● (8) ● (4)
<b>Other Offences</b> (n=6)			● (1)	● (2)		● (1) ● (2)	● (1) ● (2) ● (3)
<b>Grand Totals</b>	(37)	(13)	(35)	(34)	(9)	(12)	(140)

NB: \*The violence scales are not available for 2 cases of commercial robbery

- Under 3 years    ● 3 to 4 years    ● Over 4 and up to 6 years
- Over 6 and up to 12 years

A further review of the use of long-term detention reveals that there has been an increase in the average terms of detention awarded to juveniles convicted of grave

crimes. Between 1983 and 1993, a majority (approximately 65%) of the juveniles detained under (what was then) the provisions of s. 53(2) of the CYPA 1933, received sentences of between eighteen months and three years (Criminal Statistics for England and Wales, 1983-1993; see also Jowitt, 1996: 22). This was at a time when the maximum alternative custodial sentence available for juveniles (aged 14-16/17) was 12 months. An increase in the maximum alternative custodial sentence to 24 months, as a result of the Criminal Justice and Public Order Act 1994, had a corresponding effect on the average terms of detention for juveniles convicted of grave crimes, which rose to between three and four years. This finding, therefore, indicates that the average periods of long-term detention have increased and that sentences of detention for offences located at the lower end of the grave crimes spectrum have become longer. These observations may also demonstrate a willingness of the higher courts to award lengthier periods of detention to juveniles convicted of certain violent and other very serious crimes.

### **Judicial comments and reasoning**

In an attempt to provide a broader view of the use of longer periods of detention, the research has sought to include some examples of comments made by judges during the sentencing process. These comments not only provide an insight into the use of long-term detention, more generally, but they also shine further light upon the sentencing of certain respondents in this study. In particular, the judges make references to various offender characteristics (including age and previous convictions) and provide justifications for the use of longer terms of detention in some individual cases. Additionally, the concepts of punishment, deterrence and public protection are further revealed. The judicial comments, copied verbatim, were obtained from the court and sentencing records contained within individual inmate prison files:

#### ***Violent street robbery - 42 months detention***

The victim was led off by a wicked group with the foulest of intentions, with the purpose of beating him and meeting your need for violence. He received a beating, was hit over the head with a bottle, and had a severe kicking. Let's not forget the victim. It is part of the function of the court to protect people and to deter. You were found guilty by the jury, you have previous convictions, some recent, and you were under a supervision order at the time of the offence. While I accept you played a significant part, it was a lesser part than the others. The sentence

has to reflect this. Clearly for robbery with serious injuries, only custody can be justified ... your wickedness merits a significant punishment.

***Violent street robbery - 4 years detention reduced to 3 years on appeal***

I regard this offence as so serious that only a substantial custodial sentence can be justified. In your case I am also of the view that a sentence of deterrence is necessary... there being no other way, in my judgement, of dealing with you but by way of a long sentence of detention. In your case there will be four years detention. I express the hope that the Home Office will consider that you continue to reside at the local authority secure unit.

***Multiple robberies of small shops - 4 years detention***

Those who work in small shops must know that when defendants are caught for committing offences of this kind against them, they will be properly punished. Now in your case, you are much younger than the other two defendants, only 16 years old. You have, nonetheless, criminal convictions ...an unenviable record of criminal convictions. You were the youngest, and it may be that to some extent you were influenced by those who were older than you. But I have equally no doubt that you entered into the spirit of the enterprise with enthusiasm ...for it was you who in order to emphasize the serious aspect of your intentions brought that axe down on the counter in front of the female shopkeeper ... in my view your role in this crime was an important and very significant role indeed. I bear in mind the fact that you have pleaded guilty to the offence. But I am bound to say that an offence of this kind is so serious that only custody would in any way be appropriate, and indeed so serious that a deterrent element in any sentence has to be called for. In your case, because of your age, the maximum sentence would be two years. I do not feel that this is adequate to reflect the seriousness of your crime. Therefore, taking into account your plea of guilty, I sentence you to a period of four years detention.

***Attempted armed robbery, 2 assaults and possession of drugs with intent to supply  
Total of 6 years detention***

In sentencing you, I have very much in mind your age. What I have to ensure is that in terms of the totality of the offences, the sentence does not overwhelm you and is not out of all proportion ...but serious the offences are ... I give you six years in all.

***Aggravated burglary, robbery and the possession of a firearm - 4 years detention***

These were very, very serious offences... although you have no previous convictions your age is no protection against the sentence I will impose today. These were cowardly acts, including a terrifying assault on two old men and a sub-post mistress ...Lots of persons have disadvantages in their lives, as you undoubtedly have, but who do not behave as you do.

***Street robbery – 4 years detention***

You have pleaded guilty to a particularly unpleasant offence of robbery and you are here for other matters as well. You have been before the courts on three occasions in the last twelve

months. You came out of your last sentence and it was not very long before you started offending again. It is clear that the public have to be protected from you and it can only be protected if you are kept out of the way for a long time. This is a grave offence, a robbery, and I have no doubt that only a long sentence is sufficient. I only hope that whilst in detention, you begin to learn to change your ways. This is a particularly bad case of robbery and you must be detained for four years.

***Robbery when armed with an imitation firearm – 42 months detention***

You have pleaded guilty to a very serious offence indeed, Robbery, when armed with an imitation firearm. The weapon looked like an automatic pistol, the victim did not know that it was not loaded ... mitigation well put, you are young with no previous convictions. You have shown remorse and regret for your actions. In spite of this only a custodial sentence is justified, it can't be short. You must be punished for your actions and there is also a need to deter others from doing this sort of thing. The sentence must be substantial, although credit is given for admissions and age.

The comments provide an illustration of judicial reasoning with regards to the use of longer periods of detention in individual cases. Previous research conducted before the Criminal Justice Act 1991 found that the main considerations given by judges for awarding a sentence of long-term detention were: (a) the offence was cruel, vicious, motiveless or the victims were vulnerable, (b) the public must be protected, (c) public opinion must be satisfied, (d) deterrent or exemplary sentences in cases where there is local notoriety, (e) unpredictability of behaviour, (f) previous record of offending, (g) previous experience of alternative forms of custody or care (Dunlop and Frankenburg, 1982). Findings from the present study also indicate that issues of punishment, deterrence and public protection continued to be primary justifications for the use of juvenile long-term detention following the implementation of the CJA 1991<sup>45</sup>. Nonetheless, a sentence of long-term detention must be proportionate to the gravity of the offence. Furthermore, in line with guidance from the court of appeal, the principle of restraint should be exercised in cases where long custodial sentences are being considered. As previously indicated, a term of detention should not be of such length that a young person cannot see the light at the end of the tunnel. In every case, the sentencing of juveniles to long periods of detention necessitates a complex balance between punishment and public protection on the one hand with the youthfulness of the offender and issues of rehabilitation and justice on the other.

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<sup>45</sup> See previous comments and cases cited. All respondents in the present study had been convicted after the implementation of the Criminal Justice Act 1991.

### Juvenile long-term detention and the prevalence of appeals

The present study comprises a sizeable sub-group of respondents who had been advised, or instructed (by defending barristers), to appeal against their sentences, on the grounds that the length of detention imposed was disproportionate to the severity of the offence. In some of these cases, the respondents had reported that the sentence had been much longer than had been predicted by their defence counsel. Half of the total sample (51%) had submitted an appeal application on this ground. From this sub-group (n=72), in particular, a belief that the original sentence imposed was punitive and disproportionate instilled deep feelings of injustice and unfairness, which were exacerbated when the appeal or the application to appeal failed – as it did in the majority (70%) of cases (see Table 5.8).

**Table 5.8 Outcomes following an appeal application**

Appeal Outcomes (n=72)	Numbers & Percentages	
<i>Appeal dismissed</i>	24	(33%)
<i>Appeal allowed and sentence reduced</i>	11	(15%)
<i>Leave to appeal refused</i>	27	(37%)
<i>Awaiting an appeal decision</i>	10	(14%)
<b>Totals</b>	<b>72</b>	<b>(99%)</b>
The number of respondents who did not appeal = 70 (49% of sample)		

The research findings confirm that only 15% of those who had initiated an appeal had been successful. In the majority of cases, therefore, judicial decisions had lent support to the original court judgements with regard to the appropriateness of individual terms of detention. Consequently, this finding may further demonstrate a willingness of the court of appeal to endorse the use of longer custodial sentences.

Other supplementary findings obtained from the interview data also reveal that - with regard to the collective experiences surrounding the appeals process - several respondents had reported that the period of waiting for an appeal decision had been the source of additional anxiety and stress during the first few months of the sentence. Many of those who had lost an appeal expressed feelings of injustice, anger, resentment and hopelessness, which they said had characterized the immediate period

following the appeal decision but in certain cases also continued well into the sentence.

*Appeals, ethnicity, and specific categories of street crime*

There was very little difference in the rates of appeals for respondents from different ethnic backgrounds. Approximately half of the white respondents (52%) and those from black and other minority ethnic backgrounds (49%) had appealed against the length of detention. There were, however, some ethnic differences in relation to the outcomes following an appeal. In particular, although a majority of the appeals were unsuccessful, a higher proportion of white respondents (19%) had a successful appeal compared to the respondents from black and other minority ethnic backgrounds (10%). The findings reveal that an appeal had been successful for almost 1 in 5 of the white respondents and for just 1 in 10 of those from a black or other minority ethnic group. The rate of successful appeals for white respondents was almost double that of the rates for respondents from black and other minority ethnic backgrounds. However, as these findings are based on very small samples, further empirical examination of the appeals process, outcomes and ethnicity is both important and necessary.

Other findings from the empirical data show that while there was found to be a distribution of appeals across the lower, mid and upper bands of the long-term detention spectrum, the largest proportions of appeals were concentrated amongst those sentenced to the longer terms, between 54 and 60 months detention (80% and 70% respectively). In addition, the offence of street robbery was over-represented in the cases that had been considered for an appeal: one-third of all the appeal cases had involved this offence. Correspondingly, almost two-thirds (63%) of those convicted of street robbery had appealed against the length of detention imposed, compared to fewer than half of those convicted of violence against the person (45%), commercial robbery (47%) and burglary (43%). It was also found that street robbery, in particular, attracted a wide disparity of sentences and it was mostly those sentenced to more than 4 years detention who had appealed.

These findings may allude to a particular complexity surrounding the conceptualizations of contemporary juvenile street robbery, and the construction of

proportionate and consistent sentencing. In addition, within the parameters of individual cases of street robbery and the measurement of offence-seriousness, the sentencing of juvenile offenders may (in part) also reflect: (a) a prevalence of street robbery in certain geographical locations or communities, and (b) a collective moral panic directed towards youth street crime (generally) and, in particular, street robbery. These features, which may contribute to inconsistent and punitive sentencing, could provide one explanation for the prevalence of appeals in this sample of respondents convicted of street robbery. For juveniles convicted of serious street crime including robbery and violence, the use of long-term detention may also (and increasingly) reflect *both* the necessity to punish the offender and deter others from committing similar crimes, as well as issues relating to public protection.

### **Punishment, general deterrence and public protection: Some final thoughts**

Evidence from existing case law (see above section) demonstrates that the sentencing courts and the appeal court are willing to support and endorse the use of juvenile long-term detention for the purposes of individual punishment, general deterrence and public protection. This finding may help to explain the prevalence of appeals against the lengths of detention imposed and the high rates of unsuccessful appeal outcomes. In addition, it could also be suggested that the punishment of individual crimes based on offence-seriousness *and* the application of general deterrence theory to sentencing policy, may have contributed to the general rise in the use of long-term detention for juveniles convicted of a broad range of violent and other serious offences. Moreover, this process may have had a significant impact on the use of long-term detention for juveniles convicted of offences located at the less serious end of the grave crimes spectrum (for example; bag-snatching, juvenile burglary, drugs offences). Within the broader context of general deterrence theory and juvenile sentencing policy, it is also suggested that any future research might consider the extent to which longer custodial sentences for juveniles do act to deter other young people from committing serious crimes. It has previously been observed that:

There are relatively few studies that have genuinely identified the existence and extent of general deterrent effects flowing from the legal penalty.

In addition, with specific reference to serious juvenile criminality, it would seem reasonable to suggest that the predominantly impulsive nature of such offending may act to reduce the influence of rational thoughts, perceptions or beliefs about probable consequences and, under such conditions, the threat of a lengthy custodial sentence is less likely to be perceived to be a deterrent. Moreover, within the context of serious juvenile criminality and crime prevention, the understanding and reasoning of child and adolescent offenders are important, not only in terms of their offending, but also in relation to the concept of punishment and its implications.

### **The limitations and implications of contemporary sentencing policy**

The Beijing Rules provide that action taken in criminal cases should be proportionate *not only* to the circumstances and gravity of the offence, but essentially to the circumstances and needs of the juvenile (Rule 17.1a). In relation to the desert theory of sentencing, it has been suggested that a focus on the gravity of the offence may neglect to take full account of the immaturity and vulnerability of the young (Zedner, 1998: 168; see also Hudson, 1998: 206-8). Similarly, the experiences of childhood trauma and family dysfunction or deprivation and the effects, thereof, are likely to be dissociated from the sentencing process. As a consequence, the application of desert theory and the justice model may fail to provide for the complex welfare needs of juveniles who commit very serious crimes. Other sentencing theorists have attempted to address the problem of how far desert theory can take account of the offender's social situation in mitigation. In particular, Andrew Ashworth has considered the following question:

Should it be relevant to sentencing that the offender suffered abuse as a child, had an alcoholic father, lost his mother at an early age, or otherwise had a deprived childhood?

Ashworth, 1994: 8

Ashworth concludes that within desert theory, there is the scope for mitigation based upon social disadvantage, deprived upbringing (ibid: 8) and other offender characteristics, which may have an impact on offender-culpability (Ashworth, 1998a: 148). Within the specific context of juvenile offenders and very serious crimes, however, it could also be argued that the greater the need to punish (on the grounds of



offence-severity) may act to significantly reduce the impact of offender characteristics (youthfulness and other welfare considerations) within the sentencing process. In consequence, measures of offence-seriousness that are weighted towards the harmfulness of the offence, together with a diminution of the factors that may have an impact on offender-culpability, do have implications for the construction of 'just' and 'appropriate' sentences for serious juvenile offenders. In addition, it could also be argued that measures of offender culpability that are narrowly construed, may fail to incorporate the range of social and psychological factors that are known to contribute to violent and serious juvenile offending. Within this context therefore, it could be suggested that a systematic measure of the background characteristics of serious young offenders, would provide a broader view of individual offender-culpability and assist in the construction of sentences that are appropriate to the offence *and* the needs of individual juvenile offenders. This approach, while adhering to the principles of proportionality, would necessitate a more flexible and individualized approach to the sentencing of serious juvenile offenders. At the same time, youth justice law and policy is also to be reminded that under the UN Convention on the Rights of the Child (1989):

The arrest, detention or imprisonment of a child [defined as a person below the age of 18] shall be used only as a measure of last resort and for the shortest appropriate period of time.

#### Article 37b

Within desert theory and contemporary sentencing policy, there is a growing tension between the pursuance of consistent sentences – which assumes that offenders are a homogeneous group - and a model of sentencing that is based on individual offender-culpability and measures of harm. This tension has been further exacerbated by the rise in the use of severe punishments including longer custodial sentences for both adult and young offenders. In such circumstances, therefore, the non-homogeneity of offences and the heterogeneity of offenders are tightly constrained by the requirement to achieve a uniformity or consistency with regards to serious offences and the use of severe and punitive sentences. Following the introduction of the Criminal Justice Act 2003, and with specific reference to violent offending, it has been observed that sentencing has become more prescriptive, particularly within the construction of 'appropriate' custodial sentences for serious and violent offenders (an extract from a

symposium on sentencing policy organized by the Howard League, 10.05.07). This approach to sentencing erodes the discretionary powers afforded to the judiciary. In consequence these features are likely to have a further impact upon assessments of individual offender-culpability and this, therefore, may result in a reconstitution of 'proportionality' within contemporary sentencing policy.

### **The media, public interest and popular beliefs**

Children and young people who commit very serious violent crimes can be exposed to intense and, in certain cases, overwhelming media and public attention. This process may include the wide publication of detailed and graphic accounts of the offence, as well as the personal details and biography of the offender and his or her family. A case that has become synonymous with an unprecedented level of media attention was the murder of James Bulger in 1993, by two 10-year old boys (see James Smith, 1994; Hay, 1995; Franklin and Petley, 1996). There are, however, legal measures that restrict the publication of criminal proceedings in cases where the defendants are under the age of 18. The law prohibits the publication of any information that is likely to lead to the identification (by the public) of a child or adolescent defendant. This provision is designed to protect the anonymity of juvenile defendants during legal proceedings. The restrictions on reporting – which prohibit the disclosure of identities – can, however, be lifted *if* the court is satisfied that it is in the public interest to do so. In consequence, the court may permit the disclosure of a juvenile offender's identity in such circumstances where the 'public interest' criterion is fulfilled.

This aspect of legal decision-making, therefore, juxtaposes the rights of juvenile defendants to remain anonymous, with the notion that in certain cases, the public has a right to be informed about the identities of offenders. The types of cases that are likely to generate intense public interest are those located at the most serious end of the juvenile offending spectrum. For most juvenile crimes which are dealt with at the youth court, the public interest criterion for removing anonymity is likely to be rarely met. Contrastingly, crimes of exceptional gravity such as murder or manslaughter and other very serious violent or repetitive offences are more likely to enter the public domain, via the media and then attract significant public attention and interest. In these instances the courts have a continuing duty to balance the legitimate interest of

the public with the need to protect juveniles from adverse publicity. The judicial guidance with respect to this area of legal practice has tended to indicate that the identity of a child or adolescent defendant (under 18) should only be disclosed in rare and exceptional cases (Ball et al., 2001: 85).

The present study found that from a total sample of 142 index offences, almost two-thirds (62%) had been reported on a local radio station and/or had been published in a local newspaper. In these particular cases the respondents had indicated that the published material had not disclosed their identities and, therefore, they had remained anonymous. In consequence, for a majority of the respondents in this study, it is presumed that the restrictions on reporting had not been lifted<sup>46</sup>. However, for 1 in 10 of the respondents the index offence or offences had been widely reported in the national media. Evidence from interview data and prison files<sup>47</sup> reveals that reporting restrictions had been lifted and the identities of the offenders had been disclosed and published in the national press. In most of these cases, the respondents had been convicted of either a seriously violent offence with the use of a weapon(s) or a serious sexual offence (rape) against an unknown victim(s). Certain national newspapers had published extensive details about the offence or offences, as well as the personal details and background of the offender or offenders.

Some respondents had been exposed to sensationalist front-page headlines in the tabloid press. In the case of one young respondent, the offence was reported under the heading of ...*'young sex monster gets 7 years...'* Another consequence for cases that attract significant media attention was highlighted by a further respondent, who described the barrage of photographers and journalists that had been positioned outside of the court during the trial process. In this particular case, the defendants (all juveniles) had been required to hide under blankets and enter the court via a back entrance in an attempt to protect their identities. Following their convictions, however, reporting restrictions were lifted by the court and the offenders were then exposed to the full glare of the national media. While it is recognized that certain juvenile crimes do command a strong public interest, the removal of anonymity can expose children and young people to adverse and continuing media attention. In

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<sup>46</sup> Over 1 in 4 respondents (28%) reported that the index offence(s) had not been published in the press.

<sup>47</sup> Some prison files contained the original newspaper reports.

addition, this process may have long-term implications for the rehabilitation and resettlement of offenders post custody.

Within the broader context of contemporary British society and the media, the issue of violent and other very serious crimes committed by children and young people occupies a central focus and concern. In addition, it could be suggested that this phenomenon, combined with the increasing role of the media in society, not only has implications for the publication of individual very serious juvenile crimes, but may also have broader ramifications for the representation of youthful offenders and contemporary youth crime. Undoubtedly, there are cases that invoke considerable *legitimate* media attention and pervade the national public consciousness. It is, however, also recognized that the media representation of very serious juvenile crimes may have a particular significance for the construction of public opinion and popular discourse with regards to juvenile criminality as a whole. Additionally, Kempf-Leonard and Peterson have observed that:

The media focus on violent and non-representative, or high profile cases has escalated in recent years ... [and] these stories are often accompanied by sweeping generalizations about the 'crime problem'.

Kempf-Leonard and Peterson, 2002: 443

It could be suggested that the media representation of certain exceptional and atypical youth crimes, not only triggers broader generalizations about young people and crime, but also acts as a catalyst for shaping popular perceptions or beliefs, and intensifying public anxieties and fears. The 'amplification' of violent and serious juvenile criminality by the media has resulted in recurrent moral panics directed towards child and adolescent offenders (see Cohen, 1972; Cohen and Young, 1973; Hall et al., 1978; Pearson, 1983; McRobbie and Thornton, 2002: 69-70). These features, together with the perceived notion that childhood is in 'a state of crisis' (Scruton, 1997) and, in addition, the underlying perception of a decline in our moral and social worlds, have underpinned the (re) emergence of a populist punitiveness and authoritarianism towards children and young people who offend. Moreover it has been identified that public opinion has become increasingly influential within the context of both sanctioning the power to punish, and shaping the political responses to youth crime

and punishment (Garland, 2001: 172). Cumulatively these processes have contributed to the reconstruction of punitive youth justice law and policy. In a critique of the ‘new punitiveness’, Goldson concludes that:

There is little doubt that punitive imperatives have shaped contemporary policy responses to child ‘offenders’ in England and Wales ... and equally there is ample evidence to confirm that such punitiveness is frequently expressed through practices of institutional containment.

Goldson, 2002a: 386

This analysis was further supported by both the increasing use of custodial sentences for juvenile offenders, and the rise in the use of long periods of detention for juveniles convicted of violent and other very serious crimes. There is little to suggest that this trend is likely to be *significantly* reversed within the populist political discourse that has dominated contemporary British society in the early part of the 21<sup>st</sup> century. However, the overall cumulative rise in the juvenile and young adult prison population and the recent renewed calls for imprisonment to be reserved for the most serious young offenders may act as the catalyst for substantive change.

## **CHAPTER 6**

### **Long-Term Detention and Youth Imprisonment**

This chapter will now examine the individual and collective experiences of the respondents, as young prisoners sentenced to long periods of detention. The research provides an insight into the ways in which young offenders attempt to manage a long period of custody and the specific circumstances of their imprisonment. Within this framework, key aspects of the prison regime and other significant features of prison life are examined and interpreted in the context of sociological theory as well as the criminological and prisons' literature. The research also considers the current provisions and regimes available for juveniles sentenced to longer periods of detention together with the centrality of rehabilitation as a method of preventing serious re-offending. The empirical findings are based on young prisoner interview data and supplementary (officially recorded) information obtained from individual inmate prison files. It is important to note that the research does not include any direct oral representations from prison officers/staff. Nor does the study fully explore the relationships between prison staff and individual respondents, although some of the findings do reveal aspects of the staff-inmate relationship. While, therefore, there are limitations in the scope of this research, the findings nonetheless illuminate how young people have experienced a long period of detention in a young offender institution and, importantly, the progress still to be made in both creating safer custodial environments and providing regimes that meet the complex needs of young long-term prisoners.

#### **Institutional placements for juveniles sentenced to long periods of detention**

At the time of the fieldwork, children and young people sentenced to long periods of detention were allocated to either local authority secure accommodation or a young offender institution. In exceptional circumstances, a child or young person could also be accommodated in a specialist youth treatment centre run by the Department of Health, although this service is no longer available. The current provisions available within the reorganized juvenile secure estate consist of: local authority secure children's homes (LASCHs), secure training centres (STCs) and separate young

offender institutions (YOIs) for adolescents under the age of 18. Operating outside of this system, there are also a limited number of regional secure psychiatric facilities reserved for severely mentally ill juvenile long-term detainees. The key determining factors that underpin allocation decisions are age, gender and levels of vulnerability (see chapter 5). Placements for boys aged 10-14 and girls aged 10-16 are restricted to alternative non-penal secure accommodation. In addition, boys aged 15 and 16 who are considered to be vulnerable will be placed outside of the prison system if such placements are available (see NACRO, 2002: 22-23). It is, however, further observed that young males sentenced to long periods of detention are, from the age of 15, likely to be detained in a young offender institution unless there is clear evidence of particular vulnerability (Boswell and Wedge, 2003: 5).

The allocation of custodial placements for all juveniles sentenced to long periods of detention is not determined by the court but is the responsibility of a special Section 90/91 unit (formerly the Section 53 unit) based within the youth justice board (YJB). All decisions relating to allocation and placements are made with reference to youth justice board policy, as well as reports provided by the relevant youth offending team professionals. In addition, the YJB's placement strategy indicates that the allocation of young people serving long periods of detention should seek to avoid disruptive changes of establishment during the sentence (NACRO, 2002: 24). There will, however, be age-related transfers. For example, unless there are contrary reasons, boys who are initially placed at either a secure children's home or a secure training centre can be transferred to a young offender institution from the age of 15. In addition, on reaching the age of 18, young people will move out of the juvenile secure estate and into a YOI accommodating young adults aged between 18 and 21. Those serving very long sentences and still in custody over the age of 21, will be transferred to an adult prison (see Boswell and Wedge, 2003: 7). Most of those sentenced to a long period of detention will, therefore, spend some part of the sentence - if not all of it - in a young offender institution (NACRO, 2002: 27).

Following the sentencing and allocation process, most of the male respondents in the present study (93%) were placed in a young offender institution, while just 7% of the sample (n=10) were initially (and for varying periods) placed in local authority secure accommodation, before being transferred to a YOI. One young male had spent the

first two years of his sentence at a youth treatment centre. All of the female respondents (n=5) were allocated to prison service establishments. The study includes one young female who had spent the first few months of her sentence on a separate wing at HMP Holloway for the most disturbed and vulnerable prisoners. While a majority of the respondents (73%) had stayed at one young offender institution, 1 in 5 had been accommodated at two different YOIs during their sentence and 7% of the sample had experienced multiple transfers (between 3 and 5) within the young offender prison system.

In line with the research methodology and selection process, the respondents were located at different stages of a long period of detention, with half of the sample in the first year of the sentence and the remaining half having served between thirteen months and up to four and a half years. A majority of these young prisoners (92%) would be completing the sentence at or before the age of 21 and would, therefore, remain within the YOI system. Only 8% of the sample was expecting to complete the sentence at an adult prison. At the time of this research, the respondents were assimilated into the general young prisoner population, except for those accommodated at Feltham, which at that time operated two separate wings with a distinct regime for young long-term prisoners.

### **The concept of 'time' in prison, the prison routine and sociological theory**

At the earliest stages of the sentence, the respondents had typically experienced a sense of loss (their individuality and freedom; separation from family and friends) and acute isolation, together with other feelings of sadness, fearfulness and anxiety. For a majority of the respondents (71%) this was their first custodial sentence, and for all except two young males, the first long period of detention. These features are likely to have contributed to an intensity of the emotions experienced at the start of their sentences. Furthermore, the respondents – as sentenced juveniles - were required to conceptualize the meanings and reality of serving a lengthy period of time in a young offender institution (YOI). The ways in which young people perceive 'time' in prison are likely to be shaped by the nature of youthfulness (in which time appears to pass more slowly) and the functions of the prison as a 'total institution' (see Goffman, 1968). Prison regimes are highly structured and strictly routinised, activities are time-



controlled and resources are limited. Under such conditions, it is observed that the concept of 'time' in prison is a distinctly conscious experience (Cope, 2003: 172). These features inevitably lead to both the predictability and monotony of prison life. From a previous study of the perceptions of prison time for 30 young male long-term prisoners, Cope (2003) found that:

[This] highly routinised prison structure made time feel monotonous ...and the control of time through routines led inmates to perceive every day in prison to be the same.

Cope, 2003: 160, 172

Cope (2003) also highlights that as well as managing the highly structured and strictly routinised and predictable elements of prison life - and its constituent effects - prisoners also have to manage an inherent insecurity: for example, in their interactions with prison staff and other prisoners, and at times when activities are not structured, such as periods of Association and during the night when inmates are locked in their cells (ibid: 173). Individual experiences of prison time are therefore shaped by - and encompass - both the strictly routinised, secure and predictable elements of prison life, and aspects of the regime that are less controlled, uncertain and unpredictable. While these conditions affect all prisoners, they pose particular challenges for those serving long custodial sentences, including - and most specifically - the young.

The strict routinisation of the prison and the underlying concepts of penal order and control have been subjected to rigorous sociological and historical-philosophical analyses. For example in *Discipline and Punish*, Michel Foucault (1977) argued that the control of time [and space] through a concentration of relentless timetables and routines is the force through which disciplinary power is assured. In the words of Foucault, 'time penetrates the body and with it all the meticulous controls of power' (Foucault, 1977: 152). In addition, 'power is articulated directly onto time; it assures its control and guarantees its use' (Foucault, 1977 reprinted version 1979: 160). Mitchell Dean (1994) suggests that Foucault regards time and space as 'constitutive dimensions of relations of power and rule' (Dean, 1994: 172). For Foucault, therefore, the meticulous use of disciplinary power within the prison is asserted through a continuous (uninterrupted) process of routinisation and the strict regulation (and control) of time and space (see Foucault, 1977 reprinted version 1979: 235-36). Foucault also emphasises that while other institutions (such as hospitals, schools,

factories, offices, the armed forces) also utilize similar disciplinary techniques, the prison – with its overwhelming control of all everyday activities - provides the most exhaustive, intense and unceasing discipline (ibid: 236).

More generally, Anthony Giddens (1984) has argued that the deployment of time through a process of routinisation assures the reproduction of social life, and that social institutions are dependant upon the coordination and reproduction of everyday conduct (Giddens, 1984: 17, 61-63). Within this theoretical framework, therefore, institutional reproduction through a process of routinisation is axiomatic to the continuity of social institutions and underpins the conceptualization of an ordered and secure social world. This theory has a special resonance for prisons in that the highly structured and strictly routinised prison regimes act to maintain the reproduction of prison life and the continuity of the prison as an ordered institution. In addition, other commentators have observed that Giddens' theory is also particularly relevant to the prison context, in that 'the [strict] organization of activity in its proper times and places is also of the essence of the definition of order and control, as these are conceived of and implemented by prison staff' (Sparks et al., 1996: 81-82).

From a different theoretical perspective, rooted in philosophy and existentialism (see R.D Laing, 1965: 39), Giddens asserts that 'the process of routinisation is a precondition for 'ontological security', which results in a trust in the reliability and durability of the social and natural world' (Giddens, 1984: 126). From this theory, therefore, the routinisation of daily activities provides the mechanism from which, the experience of feeling or 'being' secure (ontological security) is derived from a trust that the inhabited world is predictable, solid and continuous. The world is as it should be. In the application of this thesis to the prison context, Cope reasserts that the 'strict routinisation of prison regimes can help inmates to feel more secure because they reinforce (and increase) the predictability of prison life' (2003: 161, 172). From this perspective, while the reproduction of routines act to serve the interests of prison staff (in the maintenance of order and control), the provision of clearly structured daily activities and the reliable delivery of services may also promote and instill a sense of security for the inmates. These latter features (from the perspective of the inmates) are also instrumental to the issues of prisoner compliance and penal order. The routinisation of prison regimes therefore also acts to serve the interests of inmates and

under such conditions, 'in the main, inmates cooperate more or less willingly in the running of routines' (Sparks et al., 1996: 82).

A sudden disruption to the prison routine by inmates is always defined as troublesome by the prison authorities and may be experienced as such by other inmates. Other official disruptions to the institutional routine or practices may also lead to inmate ontological insecurity and prison disorder or discontent. Aspects of the prison regime that are less routinised and loosely structured may also evoke experiences of inmate anxiety and tension or conflict. From the literature, while Foucault focuses on the all-pervasive power of the prison, he generally neglects the issues of inmate resistance and subversion. In contrast, Giddens has argued that prisoners retain some means, however attenuated, of influencing the actions of their captors (Giddens, 1984: 156, cited in Sparks et al., 1996: 67). Within the rituals and routines of prison life, 'inmates need to retain some degree of autonomy and a sense of the self, by subverting, circumventing or escaping momentarily the officially prescribed order of things' (Sparks et al., 1996: 51). Such actions are likely to be both intensified by, and responsive to, the constraints and frustrations encountered within the prison (see King and McDermott, 1990). The experiences of inmate resistance, defiance and conflict can arise from the intensely oppressive and severely constraining elements of prison life. In consequence, while the strict routinisation of the prison is the source of order and compliance, its multifarious effects may lead to intermittent disorder and resistance.

The maintenance of prison order is closely bound by a complex process of negotiation and compromise between prison staff and inmates (Sparks et al, 1996; see also Morgan and Liebling, 2007: 1130). The extent to which this delicate process is fostered is central to the elements of control and compliance. Previous research findings have reiterated that whilst 'prisoners may not fully accept institutional authority, they do [essentially] conform to its demands and attempt to utilize it to their own benefits' (Loucks, 1994: 28 cited in Bosworth and Liebling, 1995: 44). However, for this to happen the authority of the prison must be seen to be legitimate and, importantly, the application of penal rules and practices should be guided by concepts of consistency, fairness and justice (as prescribed in the Woolf Report, 1991): 'only legitimate social arrangements generate normative commitments towards compliance'

(Sparks et al., 1996: 87). As a consequence, while the nature of inmate compliance is a complex issue, the experience of compliance may emanate from a sense that the authority of the prison and the application of penal rules and practices are legitimately and fairly asserted and expressed. From this analysis, the conditions for inmate compliance are formed from the legitimate social organization and reproduction of everyday prison life. Moreover, the dynamic and inter-dependent processes of legitimate penal authority and inmate compliance are instrumental to the effective maintenance of prison order and stability over time. However, while inmates may act in various ways, to attempt to ameliorate (or resist) the harsher elements of imprisonment, the characteristics of the prison - as a tightly structured and strictly ordered institution - will ultimately dominate and assure its continuity.

### **Young offenders and the management of a long period of detention**

The management of a lengthy period of imprisonment presents many challenges for young people, particularly in terms of the extent to which they are able to adapt to the prison routine and assimilate into the prison culture and its social life. This necessary process both shapes individual subjective experiences of imprisonment and underpins the individualized nature of the prison experience. As with other categories of inmates, young long-term prisoners develop their own strategies in an attempt to manage their prison time and control or reduce the harsh elements of imprisonment (Cope, 2003: 159; see also Mathiesen, 1965; Goffman, 1968; Sparks et al., 1996; Wilson, 2003: 412). The ways in which young prisoners have attempted to manage their time in prison, however, has received very limited empirical scrutiny, although the research that has been conducted provides some interesting findings. For example, in research carried out by David Wilson, a small sample of young black male prisoners described the strategy of 'keeping quiet' or 'going nuts' as a method of attempting to manage and control the conditions of their imprisonment (Wilson, 2003: 418). In this study, the strategy of 'keeping quiet' is interpreted (by the young prisoners) as, 'biting your tongue' and 'holding fire' rather than just being silent. This response illuminates conformity to the regime but with an underlying resistance. The alternative strategy described as 'going nuts' was found to be essentially reserved for moments of personal crises. Wilson observes that this latter strategy was used very sparingly, in recognition of the potential penal responses to such actions including the

use of restraint, segregation, other sanctions and ultimately transfer to another young offender institution (ibid: 421).

The findings from Wilson's research are reflected in the experiences of the present sample of young long-term prisoners. Most typically, the ways in which the respondents attempted to manage a long period of detention are revealed in the following selected comments from 7 young males:

You try to get your head down and get through the sentence the best way you can.

I keep busy and do lots of things to help the time pass more quickly.

You try to avoid trouble.

I mind my own business and try not to get involved with others.

I keep myself to myself and I don't bother anyone else.

I get on with things, and make sure that I keep busy, it helps me cope with things.

Sometimes people can't cope with prison and they take it out on others.

Underlying these comments, it was also evident that these young long-term prisoners had relied on the delivery of clearly structured daily activities as a way of passing their time in prison and coping with the specific circumstances of their imprisonment. In addition to this strategy, however, the respondents were also exposed (as victims and perpetrators) to the pernicious elements of risk and harm that are endemic within young offender institutions. These latter features of prison life may severely impact upon individual subjective experiences of imprisonment. The respondents in the present study typically indicated that their attempts to manage a long period of detention had been punctuated by intermittent feelings of acute isolation, anxiety, depression, anger and frustration. Most had experienced some periods of personal crisis, particularly (although not exclusively) during the early stages of the sentence. Such experiences were manifested in a variety of ways including, self-harming behaviour and/or other defiant or aggressive conduct directed towards others.

Before examining the custodial experience of the respondents in greater detail, the following comments from one young male typify the experience of, and an approach to, the daily routine of prison life:

You get set into a routine when you're in here [YOI] ...when I'm not on basic ...if you're on basic [regime] you sleep all the time, cos you only get out for one hour a day, it's twenty-three hour bang-up... I'm up at six o'clock in the morning. I do a little circuit [exercise] in my pad, and then I give my pad a general clean and make the bed. I never eat prison breakfast. I have my own cereal and I sit there and eat that. I roll a smoke and read a book or something until they let you out for work. You're out for work and you're doing that all day. Most nights I'm either at the gym or out for sosh [association]. Then you go in your pad, read the paper or something like that ...go to sleep ...the next morning it's the same, same, same.

In relation to other aspects of everyday prison life, this young respondent added that:

It's dead boring and it's a depressing atmosphere. I know some people just get their heads down and do their sentence but it's really hard sometimes. It's just like boarding school, the same rules. You get a lot of people who can't cope with prison. Some end up slashing up and that. Some people can't cope with the stress. That's like why I've lost days and that cos you get stressed and you take it out on someone. The way I see it, people who slash up ... it's cos someone else has made them do it. You know someone else is on their case, so they can't handle it.

Young male convicted of attempted murder and sentenced to 7 years detention

These comments were found to be representative of a collective sentiment to the management of a long period of detention, both in terms of the nature of compliance to the prison regime and the undercurrent of resistance, conflict and harm.

### **The experiences of young long-term prisoners: Access to purposeful activity**

The following part of the research casts light upon the extent to which respondents participated in the regime as well as their assimilation into the prison culture and its social life. In addition, the experiences of inmate vulnerability and harm as well as issues of conflict and resistance are further explored. In the first instance, the research examines the extent to which the present sample of young long-term prisoners had engaged in activities relating to work, education and training. It is broadly recognized that the participation in purposeful activity has an important impact upon the experience of prison time, in that it can both help the sentence to pass and alleviate some of the pains of long-term imprisonment. Moreover, the provision of purposeful activity is critical to issues of personal development and self-improvement (see Table 6.1).

**Table 6.1 Work, education and training in custody**

<b>At the time of the Interviews:</b>	
Full-time Education	50 (35%)
Work or Training	76 (54%)
No Work, Education or Training	15 (11%)
<b><i>TOTALS</i></b>	<b><i>141</i></b>

At the time of the interviews, 1 in 3 respondents were engaged in daily full-time (equivalent) educational studies. This sub-sample comprises those aged between 15 and 16, for whom education in prison is compulsory, and others up to the age of 18. Of those in education, just over two-fifths (42%) had been placed on a foundation studies course, which typically incorporated basic literacy and numeracy skills, together with other subjects including access to computers and information technology, art and cooking. Amongst these respondents were those with the most severe learning problems/the lowest literacy skills. However, a larger proportion (58%) of those in full-time education were studying one or more subjects leading to formally recognized qualifications, including RSA or AEB certificates, GCSEs and NVQs. Just one 17-year old male respondent was studying three subjects at 'A' level. In addition to this formal education, other practical courses that appeared to be well attended, included first-aid, cooking, parenting classes and other life skills. Irrespective of the levels of study being undertaken, most of these respondents had expressed a strong desire to complete their studies and obtain some educational qualifications during the sentence. This sentiment was coupled with a universal perception that 'getting some education in prison' would help with finding employment on release.

In addition to those participating in (compulsory/full-time) educational courses, just over half of the total sample had a job or were engaged in vocational training. Of these between one-fifth and one-quarter (22%) were receiving formal training in an area of work, leading up to a National Vocational Qualification (Level I). The majority, however, were engaged in a broad range of work activities which were not

linked to any accredited qualifications. An overview of the types of work that the respondents were engaged in at the time of the interviews is presented in Table 6.2.

**Table 6.2      Types of work at the time of the interviews**

NVQ (level I) Painting and Decorating	●●●●●●●	(7)
NVQ (level I) Welding	●●	(2)
NVQ (level I) Carpentry	●●●	(3)
NVQ (level I) Electrical Installations	●●	(2)
NVQ (level I) Catering and Hospitality	●●	(2)
NVQ (level I) Textiles	●	(1)
Wing or prison cleaner	●●●●●●●●●●●●●●	(14 including 1 female)
Working on the servery	●●●●●●●●●●	(10)
Bricklaying	●	(1)
Engineering	●●	(2)
Prison Gardens	●●●●●●●	(7)
Main prison kitchens	●●	(2)
Industrial cleaning	●●●●●	(5)
Reception duties	●	(1)
Wing orderly	●	(1)
Library orderly	●●	(2)
Plumber's mate	●	(1)
Prison laundry	●●	(2)
Welding and engineering	●	(1)
Prison orderly and escort duties	●●	(2)
Prison works department	●●●	(3 including 1 female)
Making umbrellas	●	(1)
Gym orderly	●	(1)
Chaplain orderly	●	(1)
Making flood lights	●	(1)
Repairing pushbikes	●	(1)
No work/training/education	●●●●●●●●●●●●●●	(15)
* 50 Respondents in full time education [including 3 females]		

This shows that while some respondents were participating in accredited training courses, others were engaged in work that involved varying levels of skill and knowledge, including jobs as orderlies, which typically involved a level of trust and responsibility. However, some respondents had been engaged in more menial work, such as cleaning the wing or other communal parts of the prison. For these latter respondents, in particular, their work within the prison had been collectively described as 'dull, monotonous and boring', but with the caveat that 'it was better than having



nothing to do'. In terms of access to vocational training and particular types of work, some of the male respondents had indicated a difficulty in securing vocational training on the grounds that certain courses are very popular and there were often lengthy waiting lists. In addition, between the four male establishments, there was some variation in both the types of work available and the levels of access to appropriate vocational training (see below).

1 in 10 respondents (n=15 males) were neither in work, education or training at the time of the interviews. In all but two of these cases, the respondents had been placed on a Basic regime (for disciplinary reasons) and, as a result, were excluded from attending education or work. This sub-sample (n=13) had also universally reported being locked up in their cells for up to twenty-three hours a day. The following comments from two respondents illustrate the loss of access to education as a result of being placed on a basic regime:

I was in Art back at my previous nick then I got barred from education and I've started it here. I've started to read and write and that, but I'm waiting on a class to improve my spelling ...but now I'm on Basic [regime] they won't let me back in education just yet...I'm just staying in my cell and waiting to go back.

Young male convicted of street robbery and sentenced to 4 years detention

I was doing desk-top publishing and a computer course as well, and that's when they put me on Basic, so you lose everything, you lose your job. Everything stops and you have to wait and you go on the list again.

Young male convicted of commercial robbery and sentenced to 4 years detention

These particular experiences may not only intensify the pains of imprisonment, but they could severely disrupt the rehabilitation process.

All five of the female respondents in this study were engaged in education or work at the time of the interviews: three were in full-time (equivalent) education, one was working as a wing cleaner, having completed a hairdressing course, and one other was gaining practical skills in building maintenance work.

From a broader empirical context, a large majority of the respondents (88%) had participated in some form of *educational study* during their sentence. Within this sub-sample, respondents from the different ethnic groups were equally represented. Although the levels of educational achievement were variable, almost 1 in 4 of the respondents in this study (24%) had obtained nationally recognized educational qualifications, including GCSEs (14 males/1 female), RSA/AEB certificates (13 males), City and Guilds (4 males) and NVQs in educational subjects (2 males). In addition, a further 27% of the sample (n=38) had completed courses in foundation studies and basic literacy skills and/or had obtained certificates of achievement in subjects including mathematics, English, art and communication skills. These figures, when combined with the proportion of respondents engaged in education at the time of the interviews (35%), reveal a broad participation in education and significant levels of achievement. Overall, the findings not only illuminate individual levels of attainment, but they also demonstrate the educational potential of young people in prison. Additionally, while most of the respondents, irrespective of ethnicity and gender, had participated in some form of education in prison, the value of this enterprise was most clearly articulated by the respondents from a black minority ethnic background (see also HM Inspectorate of Prisons, 2005: 2).

In relation to *employment training*, 16% of the respondents (n=23) had completed a course of work-based vocational training and had received a nationally recognized qualification (NVQ levels I-II) during the sentence, and a further 12% of respondents (n=17) were in training at the time of the interviews. The cumulative figures, therefore, show that over one-quarter of the respondents (28%) were either working towards, or had already gained a national vocational qualification. These figures appear to be lower than would be expected, although they should be viewed within the context that other respondents may have gone on to complete an accredited vocational training course at a later stage of the sentence. However, the findings may illuminate a restricted access to the types of skills-based and work-related courses that may significantly enhance employment opportunities. As previously indicated, the provision of vocational training courses was found to be inconsistent and variable across the participating young offender institutions. At the time of this research, and with specific reference to the male respondents, the opportunities for vocational training were found to be more accessible at Feltham and Swinfen Hall compared to

the provisions available at Moorland and Portland. The cumulative research findings may, therefore, allude to the limited availability of appropriate vocational training courses for (most specifically) young prisoners aged between 18 and 21. This observation sits uneasily with the aspirations of a majority of the respondents who indicated that they were hoping to complete some vocational training and/or obtain a vocational qualification during their sentence.

The extent to which respondents experienced racial discrimination with regards to job allocations and access to vocational training cannot be reliably determined. However, the empirical data reveal that at the time of the interviews, of those who were employed in the most menial jobs, as either prison cleaners or working on the servery (n=24), young black males were over-represented. From other research findings there is strong evidence that black and other minority ethnic groups in prison have been disadvantaged in the allocation of work, training and education, and in terms of promotion to positions of responsibility (Easton and Piper, 2005: 359). From a seminal prisons study conducted by Genders and Player (1989) it was found that prisoners from minority ethnic backgrounds were over-represented in the least popular jobs and were more likely to be unemployed. In addition, the study concluded that allocations were based on racial stereotypes and there were few sanctions if a decision was made on racist assumptions (Genders and Player, 1989: 131). Since this research, other rigorous investigations and studies have further confirmed the unequal treatment of prisoners from black and other minority ethnic backgrounds in terms of their access to training, better jobs and other services (Coid et al., 2002; The Commission for Racial Equality, 2003: 5). A further thematic review of race relations in prisons found that among younger prisoners, black males aged between 18 and 21 were the least to agree that the job they had would help them on release (HM Inspectorate of Prisons, 2005: 17).

Another important issue affecting access to work, education and training, concerns the transfer of young prisoners between different prison service establishments. This experience can result in severe disruption to the continuation and/or completion of educational and vocational training courses. The present study includes a group of male respondents (n=10) who, for disciplinary reasons, had experienced multiple prison transfers (3-5). These respondents reported that they had been unable to

continue either education and/or training courses commenced at a previous establishment, although just over half of this group did go on to receive other educational certificates and/or vocational qualifications. The National Audit Office has also expressed concern that the high number of movements of young people between prisons to make way for new arrivals, can significantly disrupt education and training courses, and lead to inconsistent support and supervision (National Audit Office, 2004; cited by the Prison Reform Trust, December 2007: 22).

### *Privilege Levels*

The prison system in England and Wales operates a scheme of incentives and earned privileges (IEP) for inmates, which rewards good behaviour. The scheme incorporates a scale of three privilege levels that differentiate and reflect individual patterns of behaviour over a certain period of time (Sparks et al., 1996: 26). At the lowest point, the Basic level is for those inmates who fall below accepted levels of behaviour. The Standard level is for those who conform to the regime, and the Enhanced level is for those inmates who have fully conformed to the regime, have demonstrated good behaviour and have been free from adjudications for a specified period of time. The privilege levels, which regulate access to personal cash and phone cards, also determine how much can be allowed in terms of personal possessions and the lengths of time spent out of the cells. Inmates who are placed at the Basic level of the incentives scheme consequently experience the most austere prison conditions.

At the time of the interviews, half of the respondents (50%) were located at the Standard level of the privileges scale in correspondence with their compliance to the prison regime. However, a significant proportion of the sample (57/141) representing 2 in every 5 respondents had reached the Enhanced level of the incentives scheme. This group comprised those who were not only conforming to the prison regime but had achieved an exemplary disciplinary record. In most of these cases, respondents had reached at least the mid-point of their sentences. At the other end of the scale, 9% of the respondents had been placed on a Basic regime (with no privileges) during the period leading up to the interviews. This particular sub-group (n=13) comprised 10 young males detained at one young offender institution (Moorland). At the time of the research, this particular establishment was experiencing serious disciplinary problems

involving young male inmates from different rival gangs. As previously indicated, the respondents who were on the Basic level of the incentives scheme had universally reported spending up to 23 hours per day in their cells. Overall, however, findings from the present study show that most of the respondents (90%) were conforming to the regime at the time of the interviews, and as a result, were afforded incentives to promote such behaviour. It should also be noted that while this data provides a view of the circumstances at the time of the interviews, it is also recognized that movements between the different privilege levels (in both directions) are to be expected.

### **Recreation and periods of Association**

In addition to the daily routine of work, education and vocational training, the respondents also had access to a range of both structured and unstructured social and recreational activities. From these aspects of the prison experience, other elements of prison social life are further illuminated and within the nuances of particular establishments, a commonality of routine and activity is revealed. Typically, all the respondents had access to exercise and ‘fresh-air’ in an outside ‘yard’ or area. This activity, which was commonly restricted to a one-hour period, was available either every day or on most days during the week but not at weekends. In relation to other forms of physical exercise, going to the gym was very popular with most of the male respondents and regarded as important, not only in relation to keeping fit, but also in the amelioration of stress and anxiety. However, other respondents also indicated that the gym was often the forum for incidents of inmate conflict, bullying and fighting. It was for these reasons that 8% of the male respondents (detained at just two YOIs, Feltham and Moorland) had never been to the gym. One respondent commented that:

There is a good gym here [Moorland] but there is a bad atmosphere ... a lot of bullying and all that stuff... some are scared to go.

Young male convicted of street robbery and sentenced to 3 years detention.

Other typical physical activities (available at the male establishments) had involved participation in both inside and outside sports. At Feltham, several respondents had been awarded a National Pentathlete Certificate and others at the same establishment

had been members of a successful rugby team, despite having never played this game before coming into custody. For the female respondents, access to indoor and outdoor sports appeared to be far more limited and only one of the females reported attending the gym on a regular basis. Of the less physical pursuits, respondents (both males and females) had most typically spent time reading (newspapers, comics, books obtained from the prison library), watching television, listening to music and playing card games.

Across the participating establishments, access to periods of Association ranged from every evening (Monday to Friday) from 6pm-8pm to between two and three times per week. There was no evening Association at the weekends. The periods of time spent on Association were determined by the levels reached on the IEP scheme (basic, standard or enhanced) as well as the varying practices at different establishments. Time during Association was typically spent gathering/chatting with friends or associates, watching TV, playing pool or table tennis, making (pre-arranged) phone calls to family and friends. Within this milieu, however, certain respondents had indicated that at times during the sentence, they had found the Association period to be very stressful. As previously discussed, this aspect of the prison regime, characterized by less structure, more direct contact with other inmates and generally less supervision from prison staff, can instill a deep sense of insecurity coupled with feelings of anxiety, fearfulness and tension. Under such conditions, Association can provide particular opportunities for inmate bullying, intimidation and violence. For these reasons, 18 male respondents (13% of the sample) said that there were occasions when they had elected to remain in their cells during Association (see McDermott and King, 1988). However, most of the respondents (males and females) also indicated that one of the most difficult aspects of the sentence was managing the long nights when locked up in a cell – isolated, helpless and afraid<sup>48</sup> (see Cope, 2003).

### **Access to offending behaviour interventions in custody**

During a period of custody, young offenders have access to a range of group-based courses that focus on the causes of offending behaviour and methods of crime

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<sup>48</sup> A majority of the respondents were in single cells (see separate section below).

reduction and prevention. Access to these provisions constitutes an important strand within a complex rehabilitation process (see separate section below). The following findings from the present study aim to provide an overview of the offending-focused courses available, combined with the levels of access and participation amongst this sample of young long-term prisoners. At the time of the research fieldwork, in addition to a comprehensive Offending Behaviour course, two other separate courses which also focused on the prevention of violent and serious youth offending included, Anger Management and Alcohol/Drugs Awareness. The empirical data provide a preliminary and comparative overview of the levels of participation, and expected participation, with regards to these three courses <sup>49</sup>(see Table 6.3).

**Table 6.3 Offending behaviour and other separate related courses**

Levels of Participation	Offending Behaviour	Anger Management	Alcohol and Drugs Awareness
Course Completed	42 (33%)	24 (17%)	41 (29%)
Course in Progress (at Interview)	8 (6%)	0	5 (4%)
On a Waiting List	36 (28%)	32 (23%)	32 (23%)
None of the Above	42 (33%)	84 (60%)	63 (44%)
<b>TOTALS</b>	<b>128</b>	<b>140</b>	<b>141</b>

NB: The percentage calculations are based on the total number of cases in each of the three columns. The percentages have been rounded to the nearest whole number.

A summary of the key findings in Table 6.3 shows that a majority of the respondents (67%) had either completed, were in the process of completing or were expecting to complete an Offending Behaviour Course during this custodial sentence. Interestingly, the remaining third comprised those who claimed that they did not know anything about the course (30/42), and a small number who felt that they did not need to do this course (n=12). However, of those who had completed it, most (38/42) described the experience as very positive and helpful. One young male respondent commented that:

<sup>49</sup> It should be noted that in addition to the figures provided, other respondents may have gone on to complete one or more of these courses later in their sentences and the findings, therefore, should be viewed within this context.

They told us about what to do to stay out of trouble and that, how to handle things, you know, when things get bad. It helped me to think about what I'd done and that I don't want to come back to prison and that. It was good, it helped me a lot.

Young male convicted of street robbery and sentenced to 4 years detention

Anger management courses had attracted a much smaller proportion of the sample, engaging only 2 in 5 respondents, all of whom had been convicted of serious violence. Most of the respondents had found this particular course helpful in providing strategies for dealing with and re-diverting feelings of anger. From a short-term perspective, the following comment provides an insight into the experiences of one young respondent following the completion of an anger management course:

Since I did it [anger management course] I don't think I've been in trouble for any violence or fighting or anything like that since then ...it was just when they put me down in segregation for drugs on a visit, and I had a drugs test as well you know for cannabis ...and that came back positive so I got days added on to my sentence ... and I think that's the only time I've been in trouble since the anger management course.

Young male convicted of wounding with intent and sentenced to 5 years detention

Additionally, and in line with the prevalence of substance misuse in the present sample, 1 in 3 respondents had either completed a group-based alcohol and drugs awareness course or were in the process of completing this course at the time of the interviews. A further 23% of the sample were expecting to complete the course and had been placed on a waiting list. These figures represent just over half (56%) of the total sample. In addition, 19 respondents (13% of the sample) with a known history of serious drug addiction had also been referred to and/or had received one-to-one drugs counselling during the sentence. From this latter finding, and in addition to the group-based offence-related interventions, the extent to which the respondents had received individual-based interventions and support will now be considered.

### ***Individual-based interventions and support***

In addition to drugs counselling, other findings obtained from individual prison files and interview data show that 15% of the sample (n=22) had received individual one-to-one counselling administered via the prison psychological services. From this sub-



sample, the male respondents (n=20) had typically reported that the counselling received had focused on the nature of their offending and issues relating to the causes of their violence and anger. A minority of these male respondents (n=4) however, reported that they had received some counselling (from a prison psychologist or a counsellor) as a treatment for anxiety and depression. With specific reference to the female respondents in this study (n=5), one had received medication and counselling for depression, and another had received counselling for past traumatic experiences (including rape). One other female (in the early stage of her sentence) had indicated that she was hoping to receive some psychological support/counselling during the sentence. Based upon interview data and information from individual prison files, only one male respondent had been prescribed regular and continuous medication in order to treat his symptoms of anxiety and depression. In contrast, three of the five female respondents reported that they had been prescribed anti-depressant medication and/or sedation, at intermittent periods, during this sentence. The prescribing of psychotropic drugs, sleeping tablets and tranquillizers is known to be prevalent within the female prison population (Easton and Piper, 2005: 348).

The findings from the present study provide an insight into the extent to which the respondents had access to individual psychological support in response to violent offending behaviour and/or mental health disorders including post-traumatic stress. While it is acknowledged that the figures may present a partial (and potentially incomplete) view to the reader, the findings may nonetheless allude to a significant gap between the mental health needs of serious young offenders and the provision of appropriate mental health services for young people in prison (see further discussion below). At interview, some respondents suggested that they had needed more individual help with issues relating to mental health and other aspects of their complex social lives. In summary, therefore, while the respondents did have access to group-focused accredited rehabilitation programmes, the provision of individual-based therapeutic interventions and support for this sample of young long-term prisoners was very limited.

### **The allocation of cells and cell sharing**

A large majority of the young prisoners in the present study (80%) had been allocated to single non-sharing cells, while just under 1 in 5 (18%) reported that they were sharing a cell (with one other young person) – a practice commonly referred to as ‘doubling-up’ – and atypically, three male respondents (at the later stages of their sentences) had been allocated to a 4-person dormitory. All respondents in single cells reported that they preferred to have a cell of their own rather than sharing with another inmate. From the interviews, there was a real sense that this was their own space that facilitated a rare degree of privacy within the overwhelming and rigid communality of prison life. Such conditions also provided the space for solitude and contemplation with regard to past events, the present and the future. In addition, for some of the respondents, having their own cells had also provided a place of safety and refuge from other young inmates. Paradoxically, most of these respondents also indicated that although being alone in a cell, particularly during the long nights, offered privacy, solitude and safety, it had from time to time, contributed to feelings of acute isolation and loneliness as well as episodes of deep introspection and anxiety.

For the 1 in 5 respondents who, at the time of the interviews, had been sharing a cell (n=26), most had appeared to be comfortable with such arrangements, and none had revealed any particular difficulties as a result. A total of 23 out of 26 respondents reported that the relationships with their cellmates had generally (although not exclusively) been either ‘good’ or ‘very good’, while only three males indicated either a ‘fairly good’ or ‘poor’ relationship. In most cases, therefore, respondents appeared to get on well with their cellmates, although and as would be expected, intermittent arguments and/or tensions were not uncommon. Most, however, had found that it was good to have someone to ‘chat to’ during the long evenings and night-time when locked-up in their cells. The comment from one respondent illuminates another experience of cell-sharing, and is an example of where cell-sharing could be used more constructively:

I don’t talk to my cell-mate that much cos one of my friends that I know from out there [outside of the prison] is next door so I can talk to him. My friend next door, he can’t read or write properly so I have asked if I can share a cell with him so I can write his letters for him but they are saying they are going to put someone else in there with him. But say he wants to

write a private letter like to his girlfriend or his mum and that he doesn't want nobody else writing it except someone that he knows.

Young male convicted of street robbery and sentenced to 4 years detention

In contrast to this experience, however, it is also important to note that certain younger respondents, at the early stages of their sentences, had been allocated to a shared cell on the grounds that they had been identified as particularly vulnerable and/or a suicide risk. In addition, some other respondents had been specially selected to share cells with, and support particularly vulnerable young inmates. These latter arrangements, while potentially precarious, unpredictable and demanding, nonetheless constitute an important strategy in the prevention of suicides in prison. The following written comment from a prison officer, illustrates the experiences of one respondent who had spent a period of time sharing a cell with a vulnerable and suicidal young inmate:

On one occasion he [the respondent] was sharing a cell with a boy who was apparently intent on committing suicide by hanging himself. He sat up all night talking to the lad, and he reported the situation to staff the following morning. He was commended for his actions.

Wing Prison Officer at HM YOI Feltham

This comment obtained (in verbatim) from the respondent's prison file, provides just one example of where young inmates can and do act to support each other, in what are often, very difficult conditions and/or extreme circumstances.

Issues concerning the allocation of shared cells, assessments of risk and the protection of young inmates from harm were brought into sharp focus by the racist murder of Zahid Mubarek, by his cellmate Robert Stewart, at Feltham in March 2000. This tragic death not only brought into the spotlight the treatment of young prisoners from minority ethnic backgrounds, but it also illuminated a broader and more generalized problem of managing risk and harm within the prison system. Following the subsequent public inquiry into the death of Zahid Mubarek, chaired by Mr. Justice Keith, there has been a heightened focus on the management of risk and the attainment of decent and safe environments across the entire prisons estate (The Keith Report, 2006: 443). With specific reference to the conditions for, and the treatment of

adolescents (under 18) in young offender institutions, the youth justice board and the prison service are committed to the principles of the Children Act 2004, in terms of both the protection of children from harm and the provision of safer custody.

### **Other aspects of prison social life: young prisoner alliances and coping**

It is broadly observed that prisoners form particular social attachments and organize themselves into specific social groupings, in order to alleviate or minimize the pains and deprivations that emanate from institutional life (see Sykes, 1958; Sykes and Messinger, 1960; Wheeler, 1961; Garabedian, 1964). Similarly, contemporary commentators have emphasized that ‘under conditions of greater solidarity prisoners will feel less isolated, less oppressed by staff and less at risk from one another’ (Sparks et al., 1996: 40). However, the prisoner solidarity thesis is also juxtaposed with the view that prisons are far more ‘disrupted’ societies (Mathiesen, 1965; see also Phillips, 2008: 316). The findings from the present study provide some further insights into the nature of inmate social attachments and other aspects of the prisoner-solidarity thesis. In particular, comments by the respondents made it clear that most had attempted to form friendships or alliances with other inmates, although many had also expressed an ambivalent attitude towards such ‘friendships’ and a desire to retain some independence from the influence of others. Typically, respondents reported the acquisition of ‘mates’ but emphasized that these were not like ‘real’ friends. Nonetheless, these relationships, at a basic level, had facilitated access to informal social interactions in the form of conversation, banter and camaraderie.

The experience of inmate solidarity was most evident in the respondents from black and other minority ethnic backgrounds. In particular, black male respondents had typically, although not exclusively, articulated a distinct sense of solidarity with, and support from other black inmates on their wing. Similar experiences of group solidarity and support amongst the white respondents were less evident and much less visible. David Wilson’s study (2003) provides a view of the strong alliances that can be forged between young black males in prison. In his study, the interviewees had referred to other black inmates as being their ‘brothers’ and this level of connection helped to cement a sense of solidarity. Additionally, these inmates reported that they would talk to each other about their problems and would support each other during the

difficult times in prison. From Wilson's study, therefore, there is evidence of how young black prisoners would look to each other as sources of comfort and support at times of crisis and conflict (Wilson, 2003: 419). Moreover, it is further suggested that this degree of solidarity may act to alleviate experiences of acute isolation, reduce the risk of harm, and limit the impact of prison racism and discrimination. Interestingly, one of the interviewees in Wilson's study had suggested that 'it was much harder to be young and white in prison because they don't talk to each other, not like us' (ibid: 419). Additionally, it could be suggested that the social and cultural bonds, which may define the collective experiences of young black males in society, might also be imported into the prison.

For the white respondents, a lower degree of inmate solidarity can act to restrict access to a wider network of social support. While most of them had formed social alliances with other inmates, they were often reluctant to talk about their personal problems and confide in each other. The more restricted opportunities to harness social support may increase the risk of harm, including victimization, self-harm and suicide amongst white inmates. However, some of the young black male respondents had also experienced periods of acute isolation during their sentence. In particular, certain young black male respondents at Feltham had experienced difficulties 'fitting in' with other black inmates on the wing and were also excluded by young prisoners from other ethnic groups. In addition, a number of young black respondents from the London area, who had been transferred from Feltham to other young offender institutions, had also experienced periods of severe isolation from within the new prison community. From the interview data, therefore, there is some evidence that associations with other inmates are likely to be based on a shared cultural/ethnic background, as well as other geographical or local affiliations (see Phillips, 2008: 317, 322-23).

It should, however, be noted that the exclusivity of inmate groupings could not be reliably determined from the empirical data, although observations made during the fieldwork indicated that it was more common to see young prisoners interacting with other inmates from the same ethnic group during periods of Association. From a study of prisoner identities, ethnicity and social relations in a young offenders institution, Phillips (2008) observed that at Association, while white, black and Asian prisoners

tended to cluster together, these groupings did not appear to be actively exclusive and some mixing between the groups was found (Phillips, 2008: 318). This study also highlights the identities of prisoners based upon geographical locations (home postcodes) and strong regional/local affiliations, and found that area-based solidarities within the prison often overlaid identities organized through race or ethnicity (ibid: 323). Other observations from the present study also suggest that postcode-based gang alliances and rivalries on the outside were imported into prison. The extent to which these issues are pertinent to the young female prisoner population necessitates further empirical study. Overall, however, the research findings not only provide an insight into both inmate solidarity and separation or exclusion that may characterize the individual experiences of young people in prison, but they also allude to a complex and diverse or 'disrupted' society of young inmates.

### ***Drug misuse in prison: a method of coping with prison life***

In further consideration of the prison experience, it is established that the misuse of drugs in prison is a prevalent phenomenon (see Wheatley, 2007: 400). A Home Office study conducted by Singleton and others (2005), found that four out of ten adult prisoners had reported using drugs at least once whilst in their current prison, with a quarter having used drugs in the preceding month and 16% in the week preceding the study. In addition, almost a third of the prisoners had reported cannabis use and one in five opiate use in their current prison, with 9% and 10% respectively having reported using these drugs in the week preceding the study (Singleton et al., 2005). All those detained in YOIs (including juvenile establishments) and adult prisons in England and Wales are subject to random mandatory drug tests. From these, the recorded incidence of drug misuse in the prison population for the year 2005/06 was measured at 10.3%, down from 11.6% in the preceding year (Prison Reform Trust, May 2007: 29). Research suggests that mandatory drug-testing results generally underestimate the level of drug misuse as reported by prisoners (Singleton et al., 2005). It should be noted that the findings so far presented do not distinguish the misuse of drugs in juvenile and young adult prisoner populations and particular categories of prisoners. The findings from the present study, therefore, illuminate a specific view of the recorded incidence of drug misuse in prison for a sample of young long-term prisoners aged between 15 and 21. From information obtained from individual prison

files, it was found that 15% of the sample (n=21) had at least one positive mandatory drugs test during this sentence. In all of these cases, the drug detected was cannabis. In addition, 8% of the sample (n=12) had been found to be in possession of cannabis or other substances, most notably valium. From this latter group, just over half (7/12) are featured in the sample of respondents who had tested positive to drug misuse in prison.

The recorded incidence of drug misuse is likely to be a significant under-representation of the true extent to which these young offenders had been misusing drugs during their long periods of detention. However, the findings do emphasize the incidence of cannabis misuse in younger prisoner populations, as opposed to the misuse of opiates, found to be more prevalent in adult prisons. From a similar study of 30 young male long-term prisoners (aged 15-21) conducted by Cope (2003), a majority (63%) had reported misusing drugs during their sentence, and their drug of choice was cannabis, with only one respondent admitting to using heroin in prison (Cope, 2003: 169). This research also found that the young inmates had used cannabis as a strategy for managing unstructured prison time and coping with a long sentence. In particular, the interviewees reported that smoking cannabis at night helped them to suppress feelings of isolation and to relax and sleep, and so helped the long nights in prison to pass more quickly. The interviewees had described the night as the most difficult time because they were alone with their thoughts and fears (ibid: 170). These findings, therefore, illuminate a particular view of the purpose and extent of drug use in prison for young offenders serving long periods of detention (see also Wheatley, 2007: 404). Within the constraints of the present study, while only a very partial view of this phenomenon is revealed, it is established that a majority had misused drugs prior to their imprisonment (see chapter 4). It would, therefore, not be unreasonable to suggest that such behaviour is likely to continue in prison. However, drug misuse might also be a new prison survival strategy for some young long-term prisoners.

### **Experiences of vulnerability, harm, conflict and resistance**

In addition to the earlier findings relating to self-harm and suicide attempts during a secure remand (see chapter 5), other figures from the empirical data show that 1 in 5 respondents (n=28) had thought about harming themselves during the course of their

sentence. In addition, 9% (n=13) had reported intermittent and repeat episodes of deliberate self-injury (self-inflicted lacerations and/or burns) occurring at varying stages of the sentence. However, the figures are likely to be an under-representation of the true extent to which respondents had engaged in self-harm. Information obtained from individual prison files, revealed that just over 1 in 10 respondents had been identified as a 'suicide risk' at the beginning of, and during the early stages of the sentence (n=16/142). Under such circumstances, these particular respondents had initially received additional supervision and support from prison staff. In addition, five male respondents had made a serious attempt to commit suicide (by hanging) during the first few weeks of their sentences. While the research literature has identified that incidents of deliberate self-harm and suicide attempts are prevalent in young prisoner populations (see Liebling, 1992: 60, 72), there appears to be no clear evidence that those sentenced to longer periods of detention (more than 2 years) are at greater risk. Other findings from the present study, however, show that most of those who had been identified as a suicide risk (14/16) and all of those who had attempted suicide (n=5) were young white males. Reported incidents of deliberate self-harm were found to be less prevalent amongst the respondents from a black minority ethnic background. While these findings necessitate further empirical scrutiny, they appear to reveal a lower rate of self-harm and attempted suicide amongst young black male long-term prisoners when compared to the same population of young male prisoners from a white ethnic background.

The incidence of suicide amongst young people in custody, although comparatively rare, continues to be a cause of grave concern. Between 1990 and 2003, 25 boys aged 15-17 hanged themselves while in prison custody (figures cited in Easton and Piper, 2005: 261). In August 2004, Adam Rickwood, 14 years old, became the youngest child to die as a result of suicide during a custodial sentence. In November 2007, notification was received of the death of Liam McManus aged 15 in HMYOI Lancaster Farms. Early in the morning Liam was found hanging from a bed sheet tied to the window bars in a single cell on normal location. He was serving a sentence of just one month and fourteen days for the breach of a license (case cited by the Prison Reform Trust, December 2007: 3). In the light of these tragic deaths and from a wider child welfare perspective, the youth justice board has strongly recognized that there needs to be a greater emphasis on safeguarding arrangements to protect all young



people from suicide and self-harm, as well as the other forms of harm, found to be prevalent in young offender institutions (see NACRO, 2003: 1). Moreover, following the implementation of the Children Act 2004, the practices of the YJB in relation to protecting children in custody are underpinned by a statutory requirement.

### *Other issues of risk and experiences of harm*

It is established that the incidence of bullying, intimidation and physical harm is particularly prevalent within the juvenile and young adult prisoner population (Goldson, 2002b: 58). Past comments from the Chief Inspector of Prisons (2001) have highlighted some examples of the nature of prison bullying between young inmates:

The worst examples of this are reflected in establishments where verbal intimidation is practiced by shouting from cells, and physical bullying, which takes place in unsupervised places such as showers and recesses on landings. It is essential that all parts of establishments holding children and young adults are made safe, so that the ravages of bullying and intimidation cannot be wrought.

HM Chief Inspector of Prisons, 2001: 9

It has also been suggested that young people themselves continue to 'view bullying as an intrinsic part of prison life and part of the 'natural order' of the institution' (Howard League, 2001: 11, cited in Drakeford and Butler, 2007: 223). Similarly, Goldson asserts that 'bullying is entrenched within the fabric of prison life' (2002b: 59), and Drakeford and Butler (2007) have concluded that violence in young offender institutions is prevalent. Young offender institutions and juvenile establishments have the highest assault rates of any prisons in England and Wales (Solomon, 2004; see also Goldson, 2002b: 58) and, other figures have revealed that 11% of prisoners involved in assaults classified as 'serious' are juveniles (under the age of 18), despite representing only 3% of the prison population (Prison Reform Trust, May 2007: 21). The high degree to which young prisoners are exposed to the risk of harm inevitably adds to the tensions relating to the protection of young people in prison and the provision of safer custody.

Many of the respondents in the present study had experienced incidents of bullying, intimidation, threats and assault from other young inmates. Although variable in terms

of their nature and degree, such experiences can critically shape individual subjective realities of everyday prison life (see Table 6.4).

**Table 6.4 Experiences of victimization and harm from other young inmates**

<b><i>Harm from other young inmates:</i></b>	
*Bullying/ verbal abuse/ intimidation	79 (59%)
Assault – minor injury	38 (28%)
Assault – serious injury	4 (3%)
Racist Abuse	13 (10%)
<b><i>Total</i></b>	<b><i>134</i></b>

NB: Percentage calculations are based on 134 cases. The data for 8 other cases is missing.

\*Figures include 2 female respondents.

Almost three-fifths (59%) of the sample had experienced some form of bullying from other young inmates during the sentence. Amongst these particular young prisoners, a large proportion (60/79) had no previous experience of being detained (either as a sentenced or remanded prisoner) at a YOI. Self-reported incidents included verbal abuse, other forms of intimidation and threats of physical harm. In addition, although individual experiences of bullying tended to be isolated or sporadic events, a small number had been exposed to prolonged and persistent episodes of intimidation from other young inmates. In particular, the respondents convicted of serious sexual offences (n=14) had universally experienced serious and prolonged victimization from other inmates including taunts, verbal abuse *and* physical assault. The experience of multiple types of harm (intimidation and violence) was found to be most prevalent in this group of respondents. However, more than 1 in 4 of all male respondents reported that they had been assaulted (hit, slapped, punched, kicked) by other prisoners. In most of these cases the injuries received were of a non-serious nature (minor cuts, bruises, sprains) but 4 male respondents (3% of the sample) had experienced an assault resulting in serious physical injuries (deep lacerations, a broken arm, serious scalds) necessitating outside hospital treatment.

With specific reference to issues of ethnicity, 1 in 10 respondents reported, at interview, experiences of racist abuse from other young inmates. In most of these cases the victims were young black males, and such experiences were concentrated at two establishments both with comparatively small populations of young black male prisoners. This form of victimization from other inmates as well as prison staff (see below) may, in particular, act to create a deeper sense of alienation and separation from the wider inmate community. However, these features may also further contribute to the dynamics of solidarity amongst young black male prisoners. In addition, other studies have found that racism is policed by young black prisoners, and where racism is used against them by other inmates, violent retaliation may ensue (Phillips, 2008: 322).

The following example not only provides an illustration of a serious assault, but it also captures a common response from young inmates to such incidents. In this case, shortly after arriving at the YOI, one young respondent had been seriously ‘slashed’ by another inmate using a razor blade set in a toothbrush. He had required 16 stitches to his back. During the interview, he reported that he had refused to ‘grass’ and he described the assault as a ‘prison thing’. The latter comment may provide an indication that such incidents are perceived to be a ‘normal’ or usual and expected part of prison life. An expectation of harm may also be accompanied by a sense that the prison authorities are powerless to protect them and is consistent with another aspect of the inmate code, in which there is a refusal to inform prison staff about the perpetrators of such incidents. This has also been exemplified in a previous study where, one young prisoner echoed the sentiment that ‘one thing you don’t do in prison is grass’, and others in the same study expressed a commonly held belief that ‘it was better to do nothing or sort it out yourself, rather than inform staff’ (Lyon et al., 2000: 48). This latter point emphasizes the reluctance amongst young inmates to talk to prison staff about their difficulties with other inmates as well as with other personal problems that they may be experiencing.

Within the remit of the present study, the incidence of physical harm and abuse to young prisoners by prison staff was not directly explored, although the issue of racially-oriented abuse arose spontaneously. From the literature, it is confirmed that the abuse of young prisoners by prison staff does take place from time to time. For

example, from a study of 1222 juveniles in prison custody, about one-quarter of the respondents reported that they had received insulting remarks from staff (Challen and Walton, 2004: vii, 34). In addition, approximately one in ten of the boys had reported being hit, kicked or assaulted by a member of staff (*ibid*: vii, 34). These figures provide an insight into the extent to which the youngest population of inmates (juveniles) can be subjected to experiences of humiliation and harm from those in authority, and to whom the care of young prisoners has been entrusted. Such experiences may be further compounded by the issue of racism in prisons. Within this specific context, a majority of the young black male respondents in the present study reported personal experiences of verbal racial abuse from prison officers. Similarly, from a qualitative study of convicted young offenders (n=84) in prison custody conducted by Lyon and others (2000), a significant number of young black prisoners said that they had experienced racism from prison staff (Lyon et al., 2000: 46-47). In another study based on the experiences of 1,033 sentenced juveniles in custody, boys from black minority ethnic (BME) backgrounds reported higher levels of victimization by staff than the white boys in this sample, and far fewer felt they would be taken seriously if they were to tell staff that they were being victimized. The same study also found that BME boys were much less likely to believe that most staff treated them with respect (Worsley, 2006: 11). These types of experiences may further add to, or compound, individual experiences of alienation, isolation, frustration and tension.

In relation to the perpetration of harm, it was found that one-quarter of the respondents in the present study, including one young female, had themselves participated in the bullying, intimidation and assault of other young prisoners.<sup>50</sup> These findings may suggest that the perpetration of inmate bullying, intimidation and assault could be particularly prevalent in the young long-term prisoner population. This feature may also reflect the informal social organization of prison life and its hierarchical structures from which inmate roles and status are constructed and assigned (see Little, 1990: 42). In correspondence with the severity of their offending, some young prisoners serving long custodial sentences are likely to be ascribed by others, or to achieve, a high status within the young prisoners' sub-culture. In such

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<sup>50</sup> The characteristics of these victims including offence, length of sentence and/or other particular vulnerabilities could not be reliably determined from officially recorded data.

circumstances, inmate roles may be constructed by projecting fear and demanding respect. It became evident, during the interview process that a few respondents in the present study were located at the top of the inmate hierarchy. Although a precise picture of this phenomenon could not be reliably determined, it is also important to consider that threatening and/or causing harm to other inmates could be a survival strategy to reduce their own risk of victimization.

The following case provides an example of serious inmate bullying committed and coordinated by one young respondent. The information presented was extrapolated from the young person's prison file:

At the start of his sentence, BA was placed in a local authority secure unit before being transferred to a young offender institution at the age of 15. He was located on the juvenile wing of the YOI. His behaviour was recorded as being very disruptive and he was placed on the basic level regime (Level 1). It was also recorded that BA fostered a 'gangster' image and was known to bully and threaten other inmates. He was strongly suspected of coordinating the bullying of 'weaker elements' coercing individuals with a greater physical presence than his own to exact his instructions.

Young male convicted of supplying Class A drugs and sentenced to 54 months detention

Contrastingly, the incidence of inmates assaulting prison staff was found to be very low for this sample of respondents, with only 6 incidents recorded. This finding, therefore, may indicate that while prison staff do experience assaults from young inmates, such incidents, except in extreme circumstances, are likely to be comparatively unusual events. Other figures obtained from the Prison Service, show that between April 2006 and March 2007, there were a total of 485 assaults on prison staff by juvenile prisoners held in 15 young offender institutions (unpublished figures obtained from the Prison Service, November 2008). On average there were 32 assaults on prison staff by juveniles at each of the 15 establishments over this one-year period. However, the single highest number of assaults on staff had taken place at HMYOI Feltham (100). From the cumulative figures it would appear that with the exception of Feltham, assaults on prison staff by juvenile prisoners are relatively rare.

### Adjudications and disciplinary offences

Acts of inmate conflict and resistance to the prison regime are controlled by a disciplinary system with graduated sanctions and punishment. From a range of procedures, adjudications are administered in response to serious breaches of the prison rules. From this latter perspective, the present study has examined the disciplinary records of the respondents, based exclusively on the numbers of adjudications officially recorded. Other infringements of the prison rules, resulting in the use of ‘minor reports’ and other informal methods of control, could not be reliably measured and are not included in the study. The figures illustrated in Table 6.5 represent all adjudications recorded for each of the respondents.

**Table 6.5 Number of adjudications recorded**

Number of Adjudications	0	1-2	3-4	5-6	7-8	9-10	11-13	17-20	Multiple *	Total
Number of Respondents	44	33	17	17	7	2	4	4	14	<b>142</b>
Percentage of Sample**	31%	23%	12%	12%	5%	1%	3%	3%	10%	<b>100%</b>

\*Multiple adjudications but actual numbers were not clearly discernible from official prison records.

\*\*Percentage figures have been rounded to the nearest whole numbers.

The main findings show that more than two-thirds of the sample had at least one adjudication recorded against them. While in terms of multiple adjudications, more of the respondents, representing 1 in 4 of the total sample, had received between 3 and 6 adjudications during this sentence. This latter finding reflects a more typical picture of disciplinary misconduct in the present sample. However, a sizeable minority (12%) had more than 6 and up to 20 adjudications recorded. In addition, a further 10% of the sample had received multiple adjudications, although the precise figures were not available. From these findings, there is some evidence that up to one-fifth of the sample had presented with more persistent disciplinary problems at the beginning of, and during a long period of detention. This latter population (n=31) comprised one young female, 17 young males from a black minority ethnic background and 13 young white males<sup>51</sup>. In addition, those with no recorded adjudications were

<sup>51</sup> The over-representation of young black males was found to be statistically significant ( $p > 0.05$ ).

overwhelmingly from a white UK background. These findings may allude to the notion that while some young black males do present with very challenging and disruptive behaviour, they may also be subjected to differential treatment with regards to the use of formal disciplinary procedures (see further comments below).

Adjudications were typically administered in cases where respondents had posed a threat to the order of the prison. Such conduct comprised the serious breach of prison rules and/or disobeying orders from prison staff. In addition, and commonly, respondents had received adjudications for fighting with other young prisoners. Previous studies of young prisoners have also found that most adjudications were administered for offences involving fights between inmates (see Boswell and Wedge, 2003: 27). This particular disciplinary offence could be viewed as a particularly youthful response to the frustrations and tensions inherent to prison life. During the research fieldwork it was observed, in all four of the male young offender institutions in this study, that fighting between young prisoners occurred frequently, although the incidents (as witnessed) received an immediate and swift response from prison officers. In total almost three-fifths (58%) of the male respondents in this study (n=80) had reported being involved in fights with other young inmates. In relation to other specific disciplinary offences, 21 respondents (15% of the sample) had received an adjudication for the possession of drugs and/or the use of drugs confirmed by a positive mandatory drugs test. These offences most specifically were found to occur at all stages of a long custodial sentence.

Research conducted by Genders and Player found that prison officers were more likely to take disciplinary action against black prisoners and had perceived black prisoners to be harder to manage because they were hostile to authority (Genders and Player, 1989: 131). Since this seminal study other investigations and research has broadly confirmed that racist assumptions, stereotyping and discrimination have resulted in differential treatment for prisoners particularly from a black minority ethnic background. In particular, there is strong evidence that black prisoners are more likely to experience adjudication for disciplinary infractions (Coid et al., 2002, cited in Phillips and Bowling, 2007: 446; see also The Commission for Racial Equality, 2003). A review of race relations in prisons conducted by HM Inspectorate of Prisons (2005), found that black prisoners felt they were discriminated against in

terms of a range of issues including disciplinary procedures and segregation (HM Inspectorate of Prisons, 2005: 12). Others have reported that young black prisoners are more likely than white detainees to encounter additional adversity within custodial institutions owing to racist practices (Cowan, 2005, cited in Goldson, 2006: 146). In relation to issues of order and control, Worsley's study of 1033 sentenced juveniles in custody, found that boys from a black minority ethnic background had experienced significantly higher levels of force and adjudication compared to boys from other ethnic groups (Worsley, 2006: 11; see also HMIP, 2005: 16). In tandem with the experience of racial discrimination, it is also argued that 'issues of prisoners' ethnic and religious identities may provide the mechanisms for resisting institutional control' (Phillips and Bowling, 2007: 447). It might, however, also be suggested that such responses are further engendered by the demeaning, humiliating and harsh effects of discrimination.

The present study shows that typically adjudications were concentrated in the earlier stages of a long custodial sentence, correlating with the difficulties many of the respondents had experienced at the very beginning of, and during the first few weeks of their imprisonment (see chapter 6 above). Most indicated that at first, they had felt daunted and overwhelmed by the prison environment and its inhabitants and, typically, many had initially struggled to come to terms with their sentence and to accept the inevitability of spending a long period in prison. Under such conditions, feelings of anxiety, tension, frustration or anger were managed in a variety of ways. Some respondents, at the early stages of the sentence had remained quiet and withdrawn, while others had engaged in disruptive behaviours including aggression. However, and more typically, as the respondents began to 'settle' into their sentences, adapting to the regime and assimilating into prison life, disciplinary offences either diminished or were reduced (see also Lyon et al., 2000: 43).

The general pattern of adjudications for the present sample of young long-term prisoners appears to mirror Wheeler's U-Curve thesis (1961), whereby inmates experience isolation at the beginning of their sentence followed by a process of socialization mid-sentence and a renewed sense of isolation pre-release (Wheeler, 1961, cited in Crewe, 2007: 132). The present study, however, does include a small sub-group of respondents (22/142) with persistent disciplinary problems occurring at



varying stages of the sentence. Two male respondents reported experiencing difficulties at the pre-release stage of their sentences, which had resulted in disruptive behaviour. It is recognized that inmates may experience feelings of isolation and anxiety as they approach their release from a long period of custody.

### ***The use of segregation***

From an examination of individual prison files, the range of sanctions administered following an adjudication had typically included: cautions, fines, loss of privileges, cellular confinement and loss of days delaying release. The use of segregation was applied to serious disciplinary offences either as a punishment following adjudication, or in the interests of Good Order and Discipline (GOAD). The latter criterion applies to incidents that may pose an immediate risk of harm to others. It is observed that ‘prison responses to certain kinds of risk include the allocation of inmates to especially highly controlled or protected spaces’ (Sparks et al., 1996: 93). Table 6.6 illustrates the extent to which the respondents in the present study had been placed in a segregation unit for disciplinary reasons.

**Table 6.6 Use of segregation for disciplinary purposes**

Segregation Unit for disciplinary purposes	Numbers and Percentages
Never	81 (57%)
One occasion only (one night)	28 (20%)
Several times (varying periods)	32 (23%)
<i>Totals</i>	<i>141</i>

The figures reveal that nearly half of the total sample (43%) had spent at least one night in segregation following a disciplinary offence and as a result of either an adjudication or in the interests of Good Order and Discipline. A majority (61%) of those with a disciplinary record had spent at least one night in a segregation unit. The cumulative findings indicate that for this particular sample of young long-term prisoners, the use of segregation was relatively common. From the interview data, the respondents who had spent several periods of time in segregation (n=32) described the conditions as particularly difficult and harsh. The cells were sparsely furnished and

there was little in the way of activities to help pass the time. There was no contact with any other young prisoners and interactions with prison staff were reported to be very limited. They were alone with their thoughts and left to contemplate their actions without any immediate support. The following comments illustrate the experiences of one young respondent during a four-day period spent in a segregation unit:

I've spent four days in a strip cell, you know cos I was on a visit and they said that I was getting drugs on a visit and they took me down to the block [segregation unit]. There was just a bed, that's it and you don't get let out. Your dinner gets brought up to you. I didn't get any exercise while I was in there. They take your trainers off you as well. When I came out of there it just felt weird cos I was in there for four days with nothing. They take your cigs and lighter off you, they take everything. It was really depressing in there, you're just thinking about the screws and when you are going to get out of there.

Young male convicted of commercial robbery and sentenced to 5 years detention

This experience, which was not atypical, illuminates the treatment of those respondents with a record of serious disciplinary misconduct, and alludes to the complex issues of care and control for young inmates with significant behavioural as well as emotional needs.

In addition to the use of segregation for disciplinary reasons, 17 respondents (12% of the sample) had spent a period of time in a segregation unit for their own protection. In these cases, the respondents had either been identified as particularly vulnerable to the risk of harm from other young inmates, or they had, themselves, requested to be segregated from other inmates following victimization, including physical harm and serious threats of harm. At the time of such incidents, all of these respondents had indicated that they had been frightened and scared, and had felt that prison life had become unbearable. Under these circumstances, they had been removed from normal location and placed in either a segregation unit or a specially designated unit for vulnerable prisoners. These placements were all temporary, but with a significant variability in terms of duration, ranging from a few days to several weeks. Subsequently, the respondents had been moved back onto normal location with additional supervision and support. At the time of the interviews, all the respondents were on normal location except for one highly vulnerable young female who was accommodated in a vulnerable persons unit located within an adult female prison.

This unit provided separate care for juvenile and adult female prisoners considered to be the most vulnerable and/or disturbed.

### **Contacts with family: letters, phone calls and prison visits**

It is broadly recognized that family visits have significant beneficial effects on prisoners, not only in terms of reducing the pains of imprisonment, but also in engendering pro-social prison conduct. However, the maintenance of prison visits during a long period of custody can be an additional form of stress as well as a source of comfort, support and hope. Just over three-quarters of the respondents (77%) said that they were in regular contact with their families via letters, telephone calls and prison visits (n=107). This sub-sample comprises young inmates who had reported receiving letters from immediate and/or close family members every 1-2 weeks or every month. These respondents looked forward to receiving letters from their families and, in turn, spent variable periods of their 'social' time (usually in the evenings) writing letters home. In addition, other contacts by telephone were made once each week and prison visits were also reported to be regular and consistent, although the frequency of prison visits (see below) was found to be variable. One in five respondents, however, reported that contact with family members during this sentence had been irregular, infrequent and inconsistent. This included irregular letters, phone calls and/or prison visits. It was evident that such uncertain and erratic contact, while reported to have been expected, had nonetheless furthered a deep sense of isolation and loneliness. At the extreme end of the spectrum, 4 young male respondents had neither received nor initiated any contact with their families during this period of long-term detention.

The empirical data in Table 6.7 illuminate the extent to which the respondents had received prison visits from their families during this sentence.

**Table 6.7 Frequency of family prison visits**

Prison Visits from Family:	
2 visits every month	64 (46%)
1 visit every month	28 (20%)
1 visit every 2-3 months	17 (12%)
1-2 visits during a year	21 (15%)
0 visits during this sentence	*9 (6%)
*This figure includes 2 respondents at the very start of their sentences and 4 respondents whose families were living outside of the UK	

NB: The percentage calculations are based on 139 cases and have been rounded to the nearest whole numbers.

From self-reported information, two-thirds of the sample (66%) had indicated that during this sentence, they had been receiving between one and two visits per month from their families, most commonly from their mothers and/or other close relatives. In these cases, although prison visits appeared to be very regular, the experience of some visits being cancelled at short-notice was also found to be prevalent. Additionally, just over 1 in 4 of the respondents (27%) had experienced irregular and infrequent visits from their families, with 21 respondents having experienced only one to two family visits during the whole year preceding this research and a further 9 respondents (8 males and 1 female) had received no visits at all. This latter figure includes 4 respondents for whom both parents were residing outside of the UK. It should be noted, however, that the infrequency or absence of family visits (in all but 4 cases) was typically supplemented by periodic letters and/ or phone calls.

The findings from this research shed some light upon the extent to which the respondents had experienced difficulties in maintaining family contacts during a long period of detention. In particular, certain respondents had reported that with the passage of time, the frequency of their family visits had decreased. Over one-quarter of the respondents (28%) reported experiencing difficulties in maintaining frequent or regular contact with their families over time. In addition, one-third of the sample (32%) had indicated that their families had found it difficult to maintain regular visits

as a result of the long distances to travel. Two young respondents articulated a common experience:

Now the visits have dropped a bit. It's far and it's costing too much money to get up here. My mum and dad are separated and that but my mum comes up to visit when she can and my dad writes to me every week. My sister comes up but my brother he's working all the time, and my little sister she's at school.

Young male convicted of street robbery and sentenced to 4 years detention

It costs too much and its so far, the journey and that ... she [mum] can't always come, I know that but I always feel let down and sad.

Young male convicted of wounding and sentenced to 5 years detention

These issues and their wider effects have a particular significance for young prisoners serving long custodial sentences, both in terms of limiting the important opportunities to (re) build and strengthen physical and emotional links with their families, and for maintaining a connection with their own social worlds outside of the prison walls. These features may also act to intensify feelings of abandonment, isolation and loneliness. In addition, and crucially, the extent to which young prisoners are able to maintain links with their families constitutes an important part of the resettlement process post-custody - particularly in relation to having somewhere to live and receiving support.

Research conducted by Lyon and others (2000) indicates that young people in prison have a strong sense of the strain placed on their families in order to maintain contact, and at the same time, while these links to the outside can be tenuous and difficult to maintain, they were also highly valued (Lyon et al., 2000: 52-53). More recent figures for 2005/06 show that around a quarter of boys in custody and almost half of the girls were held over 50 miles away from their home (Prison Reform Trust, December 2007: 21). In particular, there is a major shortage of YOI places for young males from London and the South East, with many held long distances away from home, or transferred between different young offender institutions. The re-rolling of Cookham Wood from a female establishment into a young offender institution for boys (aged 15-17) was designed to alleviate this situation. As part of the youth justice board's (YJB) *Strategy for the Secure Estate for Children and Young People* (2005) there was

an intention to increase stability across the secure estate, by placing young people closer to their home and community and providing less disruption to them and their families (Magazine for Youth Justice, published by the Youth Justice Board, June/July 2007: 3). It is, however, also recognized that such aims are likely to be compromised by the size of the juvenile prisoner population and the increasing numbers of juveniles sentenced to longer periods of detention.

### **Contacts with girlfriends/boyfriends and other friends**

While a significant proportion of the male respondents in this study (39%) indicated that they had managed to maintain contact with a girlfriend during their time in custody, it did appear that such contacts were more typically maintained through phone calls and letters, and that visits tended to decrease during the course of the sentence. Only 7% (n=10) of the male respondents had managed to maintain regular contact with their girlfriends *and* had received regular prison visits from them. In most of these cases (8/10) the couples were the parents of a young child or children. Consequently regular prison visits from their girlfriends also typically included contact with their young children, some of whom had been born either during the period of remand or at the start of the sentence. Through these visits, therefore, the respondents had an opportunity to see and spend short periods of time with their own very young sons and/or daughters. The sentiments commonly expressed had included; *'my girlfriend is standing by me and this is my family now'*. Although, these young fathers were also painfully aware of the precariousness of such relationships, and of the possibility that such contact may, during the course of a long sentence, deteriorate over time. Only one of the female respondents (1/5) had been in regular contact with a boyfriend during the sentence, and in this case her boyfriend was her co-defendant who was also serving a long custodial sentence. While the prison service had not permitted visits, regular contact had been maintained via letters.

Table 6.8 details the extent to which, the respondents had been in contact with other friends during this sentence.

**Table 6.8     Contact with friends during a long period of detention**

Contacts with Friends:	
No Contact	48 (35%)
Phone calls and/or letters only	58 (42%)
Occasional Visits	26 (19%)
Regular Visits	7 (5%)

NB: The percentage calculations are based on 139 cases and have been rounded to the nearest whole numbers.

The figures show that just over one-third of the sample (35%) had experienced no contact at all with any friends - no letters, no phone calls and no prison visits. While a majority (65%) had been in some contact with friends, this was for the most part limited to phone calls and/or letters. Regular prison visits from friends were comparatively rare: just under 1 in 5 (19%) respondents had reported receiving occasional prison visits from friends and only 5% (n=7) had indicated that prison visits from friends had been regular and frequent throughout the sentence. These findings may reflect circumstances in which delinquent peers have been in custody at the same time. Alternatively, the financial costs of travel (some journeys would necessitate travelling by train to the nearest station and then taxi to the prison gates) may have also inhibited visits by young friends. In addition, it could also be that in terms of both delinquent and non-delinquent friends, some may (albeit for different reasons) have been uncomfortable with visiting a young offender institution. Irrespective of the possible causes, it is clear from the present study that strong peer-group ties (existing prior to imprisonment) are likely to be weakened or broken when offending leads to a long custodial sentence.

### **A summary of the empirical findings**

The cumulative findings from the empirical data provide a broad view of the experiences of the respondents during their imprisonment in a young offender institution. Within the range of individual and collective experiences, this study illuminates the extent to which the respondents had managed a long period of

detention in terms of the prison regime and other aspects of prison social life. It has shown the ways in which the respondents actively engaged with the regime and participated in purposeful activities, including a range of educational and vocational training courses, and other programmes designed to address issues of offending behaviour. Typically, the respondents wanted to gain something positive from the sentence and viewed it as a means of self-improvement. In terms of their aspirations for the future, most said that they wanted to stop committing crimes, to get a job and to settle down. Contrastingly, other findings reveal that at the time of this research, there were significant deficits in the provision of mental health services and individual-based interventions for young long-term prisoners. In addition, individual experiences of harm within the prison may further restrict or inhibit the process of rehabilitation. These findings are reflected in both the literature and later policy initiatives. From this context, therefore, broader issues relating to the effectiveness of custodial regimes for young long-term prisoners and further developments in research, policy and practice will now be considered.

### **Custodial regimes for young long-term prisoners: A broader view**

Within the UK, there has been very little research that has rigorously evaluated the regimes available for juvenile offenders in prison custody (Boswell, 2006: 131). There has also been a lack of robust studies that compare the regimes in the different types of provisions available to child and adolescent offenders in custody (Hagell and Moran, 2006: 117-118). Within the specific context of the custodial regimes available for juveniles sentenced to long periods of detention, the lack of comparative and evaluative data is even more striking. A notable study in this area, however, was conducted by Ditchfield and Catan in 1992. This evaluated and compared the regimes available for juveniles sentenced to long periods of detention (under the provisions of what was then s. 53(2) of the CYPA 1933) in young offender institutions and local authority secure units (now known as local authority secure children's homes). The research found that the level of services (notably education and training) and the quality of life (as assessed by a wide range of measures concerned with privacy, autonomy and staff-inmate relationships) in the local authority secure units was manifestly superior to that in the young offender institutions (Ditchfield and Catan, 1992: 50). The study also considered that the lower reconviction rates for those from



the local authority secure units could be attributed directly to the overarching philosophy of care and treatment as opposed to the security and control ethos dominant in young offender institutions (ibid: 48, 50-51; see also Boswell, 2006: 132).

From the population of children and young people sentenced to long periods of detention, most of the young males aged between 15 and 17 (inclusive) are detained in young offender institutions. Since the reorganization of the juvenile secure estate, it is emphasized that the regimes for prisoners under the age of 18 should do all they can positively to motivate young people via individually tailored programmes (HM Prison Service 2000). Within an 'ordinary' or standard YOI regime, however, there is no special focus on the needs of juveniles sentenced to long periods of detention (Boswell, 2006: 133). In practice, therefore, this category of young prisoners is, most typically absorbed into the regimes available for all juveniles in young offender institutions. As an alternative, and in recognition of the scale of vulnerability, the youth justice board together with the prison service, in 2001, introduced three separate and distinct 'Enhanced Units' specifically designed to accommodate the most vulnerable male juvenile long-term prisoners. The units which were originally located at HMYOIs Castington, Warren Hill and Huntercombe, together provided accommodation for approximately 100 male juvenile long-term prisoners. These much smaller units were developed to provide a particularly high level of regime activities and individual support, with a high staff-trainee ratio. The regime incorporated individually tailored educational and skills programmes, group-work and individual-based interventions, all of which aimed to address multiple and complex needs (see Boswell and Wedge, 2003: 5, 22). It was envisaged from the outset that the Enhanced Units would be particularly appropriate for 15 year olds and the more vulnerable and challenging 16 and 17 year olds who may need a regime that is more akin to that delivered in local authority secure children's homes (HM Prison Service, 2001; cited in Boswell, 2006: 133).

With specific reference to the regimes available for juveniles sentenced to long periods of detention, a rigorous evaluation of the regime at an Enhanced unit combined with a comparative study of a non-enhanced 'ordinary' regime in a young offender institution was conducted by Boswell and Wedge (2003). The research

included a follow-up study of young people who had completed their sentences at the Enhanced Unit (n=24) and the standard YOI (n=20). The follow-up period was between nine months and two years after release. With regard to the Enhanced Unit, the research ‘chronicles a regime in which antisocial characteristics are replaced by pro-social characteristics; where educational and constructive leisure pursuits are opened up, and broken family relationships are healed’ (Boswell and Wedge, 2003: 81). All aspects of the regime were rated positively by the trainee sample and individual comments suggested that it was the holistic ‘24 / 7’ nature of this supportive and respectful regime that equipped trainees for rehabilitation (ibid: 81-82). It is also reported that the Enhanced regime providing a high staff-inmate ratio, with a range of closely supervised education, training and treatment facilities, led to better outcomes in terms of re-offending, problem reduction, self-esteem and coping levels, than did the non-enhanced standard YOI regime (Boswell, 2006: 142). The enhanced regime group had reported significantly fewer problems both at the end of their imprisonment and two years after their release. The research also broadly indicates that in contrast to an enhanced regime, the non-enhanced and standard or ‘ordinary’ regime at a YOI does little to address the complex and multiple needs of young prisoners serving long periods of detention (Boswell and Wedge, 2003: 81-82). In consequence, the research suggests that there is a need for smaller establishments (or dedicated units) with dedicated staff who can ensure that individual treatment and education needs are not only identified but that programmes are implemented and sustained. Additionally, it is suggested that the ‘enhanced’ model should be built upon and extended across the juvenile secure estate (Boswell and Wedge, 2003: 84, 86; see also Boswell, 2006: 133-43). Most significantly, however, the three original ‘Enhanced Units’ have been transformed into special ‘Long-Term Sentence Units’ currently located at HMYOIs Wetherby, Ashfield and Warren Hill, and providing accommodation for approximately 100 of the most vulnerable male juvenile long-term detainees<sup>52</sup>. Evidence from the literature and the present study indicates that an expansion of these units is both a necessary and important objective.

From a broader perspective, although it is recognized that the conditions, regimes and services available to juveniles in young offender institutions have generally improved

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<sup>52</sup> An evaluation of the use of Long-Term Sentence Units for juvenile offenders was commissioned by the Youth Justice Board in 2011.

significantly, other recent reports have also indicated that the prison conditions and regimes for young adults aged between 18 and 21 have been seriously neglected. For example, it is observed that the 'improved regimes for the under 18s have thrown into sharp relief the poor treatment of 18-20 year olds', as revealed in the reports of the Chief Inspector of Prisons (Lyon, 2003: 28, cited in Easton and Piper, 2005: 218). These circumstances have a particular significance for the present study, in that within the reorganized juvenile secure estate, juveniles sentenced to long periods of detention, and still in custody at the age of 18, will be transferred to the young adult prison system. In consequence, it would seem reasonable to suggest that following such a transfer, young long-term prisoners are likely to experience a serious disruption (both emotionally and physically) to their custodial experience. From the perspective of the regime change alone, these young prisoners will have less access to education and training opportunities, reduced levels of support and severe limitations in terms of the provision and delivery of interventions that meet individual needs. Under such conditions, progress made during the earlier stages of the sentence could be significantly undermined and the process of rehabilitation severely affected. As a consequence, it is suggested that continuous and effective sentence plans are critical to the care and treatment of young long-term prisoners. In addition, Boswell and Wedge (2003) have also emphasized that:

The idea of regime and treatment continuity via a single placement of containment for young long-term prisoners throughout their sentence is not a new one, and may be a 'next step' in the strategy for the custodial management of this category of young people.

Boswell and Wedge, 2003: 50

### **The provision of mental health services for young people in prison**

It is broadly recognized that the mental health needs of young people in prison have been consistently neglected. From the research literature, studies have identified serious deficits in the assessment of mental health problems and the provision of appropriate mental health interventions and support for young prisoners (see Nichol et al., 2000). Boswell and Wedge (2003), found that some of the most vulnerable young long-term prisoners accommodated at an Enhanced Unit did not always feel that they were receiving appropriate treatment (if any) for their mental health problems

(Boswell and Wedge, 2003: 33). The woeful neglect of the mental health needs of all categories of prisoners continued during the 1990's and into the early 2000's. In 2001, the policy document *Changing the Outlook* proposed major changes to the provision of mental health care for remanded and sentenced prisoners (Department of Health and HM Prison Service, 2001, cited in Senior and Shaw, 2007: 390). Subsequently, there have been substantive structural changes to mental health services for prisoners. Most specifically, for all prisoner populations, prison-based mental health in-reach teams are charged with developing a multidisciplinary service, offering prisoners specialized mental health care similar to that provided to the wider population by community mental health teams (ibid: 391; see also Liebling et al, 2005). In tandem with these specialist services, and under the Health Improvement Partnership, prisons and partner primary care trusts are responsible for undertaking meaningful health needs assessments and developing a range of services to match identified needs (Senior and Shaw, 2007: 394). In practice, however, there remains a wide gap between the mental health needs of prisoners and the delivery of appropriate mental health services.

With specific reference to the mental health needs of juvenile prisoners, in 2007 the Department of Health invested an extra £1.5 million to extend Child and Adolescent Mental Health Services within young offender institutions (Almond, 2012: 193). From this provision, it was envisaged that more multi-disciplinary teams (comprising psychiatrists, clinical psychologists, mental health social workers, community psychiatric nurses and a range of other therapists) would deliver a specialized service for juvenile prisoners with severe, complicated and persistent disorders (Youth Justice Board News, April 2007: 4). However, subsequent research has revealed that the extent and quality of mental health services for male adolescents in young offender institutions remains patchy and wholly inadequate (Almond, 2012: 189, 193). It is recognized that young people in prison are some of the most damaged, with figures indicating that approximately one-third will have clearly identifiable and long-standing mental health disorders or related problems such as self-harm, psychosis-like symptoms and learning difficulties (YJB News, April 2007: 4; see also HM Chief Inspector of Prisons, 1997: 45, 50; chapter 4 of the present study). The incidence of mental health problems has been found to be even higher (approximately 40-48%) for some samples of juveniles convicted of very serious offences and sentenced to long

periods of detention (Boswell and Wedge, 2003: 32-33). A failure to meet the mental health needs of young people in prison custody not only represents a serious lack of care, but it may also contribute to the risk of re-offending.

### **The rehabilitation of damaged young lives**

The process of rehabilitation constitutes an important aspect to the sentencing of juveniles to long periods of detention. It is interesting to note that from recorded comments obtained from individual inmate prison files, a number of trial judges had expressed a hope that the sentence would provide opportunities for rehabilitation and the transformation of damaged young lives. From the research literature, there are indications that the provision of enhanced and holistic custodial regimes can result in positive outcomes for children and young people who commit very serious offences (Boswell and Wedge, 2003). There is also evidence that structured, targeted and multi-modal interventions, that address the complex and multiple needs of violent and serious young offenders, are the most effective in reducing the risk of serious re-offending (Henggeler et al., 1992; Borduin et al., 1995; Bailey, 1996: 7; Bullock, 1996: 13; see also Hagell and Moran, 2006: 112, 117). Within the specific context of a young offender institution, this means not just seeing the young prisoner as a serious offender, but also recognizing the vulnerable and damaged young person behind the crime. In addition, custodial interventions can be effective when structurally linked with community-based interventions (Bailey, 1996: 7). From this perspective, evidence-based practice/interventions should be utilized across community and custodial settings. It is also recognized in law and practice that post custody, a system of intervention in the community combined with rigorous supervision and continuing after-care and support, constitute critical elements of the rehabilitation process (Hagell and Moran, 2006; 117-18; see also Easton and Piper, 2005: 290-92).

From the research literature, more evaluation and outcome studies that measure the effectiveness of interventions, especially for different categories of young offenders, would significantly build upon existing theory and practice:

More research is needed to help us understand how to diminish risk and enhance strengths, and build opportunities for growth and resilience.

Hagell and Moran, 2006: 125

There have been very few longitudinal studies of young offenders following the completion of a long custodial sentence. Susan Bailey has observed that there is little knowledge about what happens to this category of young offenders in relation to long-term criminological and other social outcomes (2006: 35). In order to bridge this gap, more extensive longitudinal studies might wish to consider not only reconviction rates but also other aspects of social life, including family and relationships, friendships, employment and training opportunities, leisure activities, physical and mental health. Additionally, the impact of any interventions and treatment during the period of custody and/or in the community could then be identified and evaluated in the light of a range of individual experiences. From the research that is available, there is some evidence that children and young people who have served a long custodial sentence have lower reconviction rates compared to the general population of young offenders post-custody, although such findings have (so far) been based on very small samples (Boswell and Wedge, 2003: 73-74). From this perspective alone, further empirical research would appear to be essential. It is, however, suggested that custody should be reserved for the most serious juvenile crimes, and the use of [ineffective] short periods of detention should be replaced by rehabilitative community-based sentences. Furthermore, if we are to accept that there are certain crimes committed by children and young people that do necessitate the use of long periods of detention, then the aim to develop a *more* humane and *less* damaging custodial system is a critical starting point to the process of rehabilitation.

As a final thought, the following comment provides a further insight into the experience of serving a long custodial sentence at a young age and the overwhelming sense of sadness and the loss of time.

The way I see it, the only thing it's taking is the freedom, that's about it. I just feel the same, I don't feel that I've aged, but I have. It's like I've missed out on those certain years. I do feel sad sometimes, like I've missed out on some things, but sometimes I just think to myself I can start afresh when I get out. I don't know what I'll do yet, but I just think I can start afresh, pick up what I've missed out on. I reckon when I do get out, I'll start growing up a bit more. Cos in here it's like, I came in here when I was 15 and it's like your life has stopped at 15, and it will start again when I get out ... when I get out it will be my 19<sup>th</sup> birthday.

Young male convicted of wounding and sentenced to 6 years detention

## CONCLUSIONS

The present study has focused on a distinct and separate population of juvenile offenders who, as a result of the gravity of their crimes, are sentenced to longer periods of detention. A detailed picture of the history and contemporary use of detention under the provisions of s. 91 of the Powers of Criminal Courts (Sentencing) Act 2000 (formerly s. 53(2) of the Children and Young Persons Act 1933) is presented. This area of the criminal law has been considered in the light of broader developments within youth justice and penal policy. In addition, other legislative, ideological and social perspectives and trends which have impacted upon the use of s.91 detention are strongly illuminated. Key findings from the present study show that during the 1990s, there was an unprecedented rise in the number of juveniles sentenced to a term of detention above the usual 24-month limit. This trend was sustained during the 2000s. In addition, following the implementation of the CJA 2003, other separate extended (determinate and indeterminate) sentences have been introduced for ‘violent and dangerous’ juveniles. As a result of these latter provisions, the law relating to very serious violent offending has become increasingly punitive and predominantly driven by concerns for public protection. While the general use of custody for juvenile offenders has declined, the proportion of young long-term detainees has increased. Figures at the end of March 2010 show that out of a total of 2,145 sentenced young people under 18 in the YOI system, almost one-quarter (n=454) were serving long sentences (Howard League for Penal Reform, June 2010).

Section 91 detention is available for a broad range of violent and other very serious crimes which are deemed by the courts to necessitate longer periods of detention. There is no statutory minimum period of detention and the maximum can include a life sentence. Findings from the present study provide a significant insight into the types of offences that have resulted in the use of s. 53(2)/ s.91 detention. Most of the cases analyzed involved the use of violence and/or threats of serious harm. In addition, the use of weapons to either inflict or threaten harm was a common feature. Many of the victims were identified, by the courts, as vulnerable by virtue of their advanced or youthful age, gender and/or other personal circumstances. Evidence from the present study shows that overall net-widening has not resulted in the use of the

sentence for less serious offences. Furthermore the criminal statistics from 2007 show that the use of the s.91 sentence is being increasingly reserved for serious violent offences against the person (including sexual offences) and violent robbery cases. The use of this sentence for other offences is comparatively rare.

The research findings also describe key offender background characteristics and life experiences. Centrally, this study re-affirms the prevalence of loss, separation and abuse in the backgrounds of young people who seriously and violently offend. These experiences are often compounded by chaotic or unstable and unsupported adolescent social lives. High levels of vulnerability were found to be prevalent in both the male and female respondents and across all ethnic groups. Responses to psychological and/or physical trauma in childhood or adolescence can result in further harms to the self and/or to others. Human behaviour (in all its forms) is shaped by a wide range of inter-personal, social and environmental factors. The experiences of violence and abuse, other forms of bullying and acts of humiliation (as a young victim) appear to be a consistent and intractable feature in the study of young people who commit very serious and violent crimes.

The present study has also described the custodial experiences of young people serving long periods of detention in young offender institutions. It provides a detailed picture of the extent to which the respondents had access to constructive regimes and exposes the severe limitations in the provision of therapeutic-based services and support. The research has revealed the prevalence of inmate bullying, victimization and self-harm as well as the strategies the young inmates developed for coping in an insecure environment. The findings detail the nature of serving a long period of detention, at a young age, and show how the experience of a long sentence presents significant challenges at an individual as well as an institutional level. With specific reference to this particular population of young inmates it is observed that:

Understanding how long-term inmates experience time and their insecurities associated with their sentence, may offer further insight into developing appropriate interventions at suitable stages of [the sentence] to facilitate coping strategies and purposeful activity.



While significant improvements have been made to the custodial provisions available for offenders under the age of 18, there is still much work to do in relation to the provision of specialist facilities and regimes for all young people serving long sentences. Findings from the present study endorse the notion that structuring custodial regimes to meet individual, multiple and complex needs is critical to the rehabilitation process. In addition, every effort should be made to minimize all forms of harmful behaviour associated with imprisonment. The youth justice board and the prison service have a legal duty under the provisions of the Children Act 2004 and the UN Convention on the Rights of the Child, to protect young people - and their rights - while in custody. Other studies have suggested that juveniles convicted of the most serious crimes should be accommodated in small, designated secure establishments that provide an enhanced and holistic regime (Ditchfield and Catan, 1992; Boswell and Wedge, 2003). The establishment and use of three Long-Term Sentence Units is a significant step in this direction, although an expansion of these provisions is both a necessary and important objective for the rehabilitation of offenders and their protection from harm. For the future, the idea of regime and treatment continuity via a single placement of containment, for young long-term prisoners throughout their sentence, represents a progressive way forward.

### ***From custody to the community and assessing risk***

Children and young people who are sentenced to a determinate period of detention under the provisions of s.91 of the PCC(S) Act 2000 are released automatically at the mid-point of the sentence. Once released the young person is subject to license conditions and if these conditions are breached they can be automatically returned to custody (see Howard League for Penal Reform, June 2010). Assessments of risk together with the needs of young people shape the delivery of supervision and support during the license period. Risk assessments based on offending history and the custodial experience have to be carefully balanced with the individual and often complex needs of the offender. The extent to which the needs of the offender are met is critical to reducing the risk of serious re-offending. Any assessments of risk, therefore, necessitate a holistic view of the offender including the broader context of his or her offending history. The issue of re-offending is likely to be particularly pertinent in samples of young people convicted of very serious violent crimes. Data

from the present study show that from a sub-sample of respondents (n=22) who had applied for parole<sup>53</sup>, 14 out of 22 had been refused (the remainder were awaiting a parole decision at the time of the interviews). This would appear to indicate the perceived risk that these young people are thought to pose. Contrastingly, there is some evidence that a sentence of long-term detention might play a defining role in offending pathways or careers (Boswell and Wedge, 2003: 73-74, cited in chapter 6), although further empirical research is necessary.

From custody to the community, methods of rehabilitation should aim to address the multiple needs of children and young people who violently and seriously offend. This process necessitates a strong multi-agency and multi-disciplinary approach, covering areas of employment, education and training, housing, physical and mental health, and other aspects of psychological and social well-being. In relation to the expectations of the respondents in the present study, most had indicated that on release from custody they would probably be returning to the communities in which they were living before their imprisonment. For young people who have served long sentences, aspects of a previous social life are likely to have changed, old friends and acquaintances may have moved on and this may promote an opportunity to build a life free from a previous deviant social network. Evidence from the interview data suggests that the experience of having served a lengthy period of detention at a young age may act to deter serious re-offending. The notion of '*wasted teenage years*', which some of the respondents alluded to, could be an important psychological factor in the desistance of further serious offending. However, the incidence of re-offending and crime desistance in this population together with the concepts of individual deterrence and rehabilitation need to be subjected to much more advanced empirical investigation. In addition, outcomes based on gender and ethnicity should be incorporated into future studies.

While the pathways to rehabilitation are complex, perhaps some of the answers also lie within the human processes of maturation, the youthfulness of the offenders and their potential capacity to change. Most of the respondents in this study wanted to stop

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<sup>53</sup> At the time of the present fieldwork study, juveniles sentenced to 4 years or more were eligible to apply for parole. This now only applies to juveniles sentenced to life and those sentenced to Indeterminate Public Protection sentences.

committing crimes and sort out their lives. Their aspirations for the future were modest. They wanted to get a job, have somewhere to live and to settle down. It is hoped that with the right sort of help, support and good fortune, post release from custody and beyond, some of the respondents in this study will have managed to achieve their goals and go on to lead fulfilling adult lives.

The transition from one world to another ...of an acquaintance with a new reality... that is the subject of a new story ...our present story is ended.

Dostoyevsky (1866) re-printed in 1968: 528

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## APPENDIX A

### Further reflections on the research process

It is hoped that the findings presented in this study accurately reflect the individual and collective experiences of the respondents. I am extremely indebted to all the young people who agreed to answer questions about the index offence(s) and their experiences leading up to, and during, a long period of detention. From a methodological perspective, the process of conducting research in prisons presents many challenges and difficulties. It can be stressful but also very rewarding. Within a more general overview of the research process, a leading academic and prisons researcher, Alison Liebling has observed that:

Any social research is also a human process and it can therefore be fraught with personal dilemmas ... dilemmas have to be resolved situationally and spontaneously ...there is a need for an 'ethic of rigour', a thorough attention to detail, consistency, knowledge of the field ... and some thought given in advance to ethics and politics ... even given all of the latter, mistakes and difficulties are always possible.

Liebling, 2001

Young people did want to engage with the research process and they were willing to answer questions. On many occasions young people talked about particular issues or difficulties which were not part of the interview schedule and this information has remained confidential. This approach perhaps reflected my own inexperience of conducting interviews in a prison setting, but at the time it seemed appropriate and the right thing to do. I was very conscious that these young people were sharing with me very personal experiences – they were giving a lot of themselves – and the very least I could do was to listen to them, to empathize and to try and make some sense of their worlds. It has also been observed by Liebling that:

For the interviewing process in particular, but also for other aspects of the research enterprise, empathy is important ...the capacity to feel, relate and become 'involved' is a key part of the overall research task.

Liebling, 2001

While it is important to operate within the clear boundaries set by the research task, the levels of human interaction between the researcher and the interviewee, play a significant role in terms of the quality of the interviews and the data generated as well as for the research project as a whole. In this respect the objectivity of the research endeavour is closely bound to the subjectivity of the research experience in the field *and* the capacity to understand.

## APPENDIX B

The secure remand provisions available for juvenile offenders aged between 10 and 17 are summarized in the table below:

### Secure remand provisions available for offenders aged 10-17

<i>Age and Gender</i>	<i>Secure Remand Provision Options</i>
<b>10-11 years [males and females]</b>	<b>Local Authority Secure Children's Home</b>
<b>12-14 years [males]</b>	<b>Local Authority Secure Children's Home Secure Training Centre</b>
<b>12-16 years [females]</b>	<b>Local Authority Secure Children's Home Secure Training Centre</b>
<b>15-16 years [males]</b>	<b>Prison Custody [Young Offender Institution] Local Authority Secure Children's Home Secure Training Centre</b>
<b>17 years [males and females]</b>	<b>Prison Custody [Young Offender Institution] *Alternative secure accommodation only in exceptional cases</b>

\* A court can only remand 17 year old males and females to prison custody. The local authority, however, can apply to hold a young person of this age in alternative secure accommodation.

## APPENDIX C

### Extended details of two case studies from chapter 4

#### *‘Daniel’*

During early childhood, Daniel had been exposed to, and had witnessed serious domestic violence and he had personally suffered severe and persistent physical harm and punishment from his natural father. As a result of these experiences, the family had been forced to move from one house to another and, as a consequence, Daniel had experienced significant disruption to his primary education, spending relatively short periods at several different primary schools. It was recorded that his early childhood experiences were likely to have contributed to the development of behavioural problems at home and at school. Daniel’s parents were divorced when he was 9 years old, and he has had no further contact with his natural father. His behaviour at home, however, remained difficult to manage. At the age of 11, Daniel was physically assaulted by his mother’s new partner and this resulted in the involvement of social services and the child protection team. Subsequently, he was removed from his immediate family and placed in the care of an aunt who resided in a different area of the city. At the age of 13, Daniel started to attend a non-residential specialist education unit for children with emotional and behavioural difficulties. His attendance levels began to deteriorate and he soon became a persistent non-attender. It was also at this time that Daniel began to drift towards disaffected youths in the area, and by the age of 14, he was associating with a seriously delinquent peer group. Daniel was aged 14 at the time of the commission of the index offences. These offences were committed with other older teenagers. At sentencing, the judge had remarked that Daniel was ‘very vulnerable and susceptible to negative peer group influences’. Daniel had reported that he had started to offend at the age of 12, although he had no previous criminal convictions.

#### *‘Jonathon’*

Jonathon has been in and out of the care system since he was a young child. His mother found it very difficult to cope after she separated from her husband. At the age of 3, Jonathon was made the subject of a Care Order. After brief and intermittent periods in residential care, he was eventually placed with foster parents. At the age of 13, his foster placement broke down as a result of him stealing from his foster parents and he was returned to live with his mother. Jonathon wanted to make a go of living at home with his mother, but he did not get on with his mother’s new partner. The situation broke down and he was placed in a residential school. This placement broke down after only 4 weeks following an incident where Jonathon had bullied another pupil at the school. He was admitted to another residential school some distance from his home town, but after being interviewed by the police in connection with a string of offences, he was discharged from the school. He was subsequently placed at two other residential schools, but was excluded from both as a result of his problematic and offending behaviour. At the age of 16, he returned to live with his mother and the Care Order was discharged. His offending behaviour escalated and he also developed a serious addiction to heroin.

These cases illustrate, most vividly, individual childhood experiences of separation, loss and abuse. While each case is unique from an individual perspective, similar experiences are prevalent in samples of juveniles convicted of very serious crimes.

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